# CHAPTER VII

# RELATIONS BETWEEN GREAT BRITAIN, SPAIN AND THE UNITED STATES

## Introduction

7.1 In the foregoing chapters, Indonesia has set out the legal basis of its title to the islands of Sipadan and Ligitan. In order to complete the picture, it is appropriate to examine the colonial activities of Great Britain, Spain and the United States in the area since a review of the conduct of each of these States confirms the fact that Indonesia possessed sovereignty over the disputed islands.

7.2 The position of Great Britain was of course highly significant in the history of North Borneo even though, as will be seen, its jurisdiction and control never extended as far south - or as far offshore - as the islands of Sipadan and Ligitan, and it is therefore with a review of the position of Great Britain that this chapter will begin.

## Section 1. The Position of Great Britain

### A. The Dent and Overbeck Concessions

7.3 As discussed in Chapter III, on 29 December 1877, the Sultan of Brunei agreed to accord three separate grants to Messrs. Dent and Overbeck encompassing a large area of North Borneo[1]. Since the grant included a portion of territory along the east coast of Sabah which was also claimed by the Sultan of Sulu, Baron von Overbeck entered into a separate agreement with that ruler as well. On 22 January 1878, the Sultan of Sulu agreed to transfer for an annual payment of $ 5,000 the concessions to the territory described as:

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[1] See, para. 3.26, above.

> "... all the territories and lands being tributary to us on the mainland of the Island of Borneo, commencing from the Pandassan River on the west coast to Maludu Bay, and extending along the whole east coast as far as the Sibuco River in the south, comprising all the provinces bordering on Maludu Bay, also the States of Pitan, Sugut, Bangaya, Labuk, Sandakan, Kinabatangan, Mamiang, and all the other territories and states to the southward thereof, bordering on Darvel Bay and as far as the Sibuco River, with all the islands belonging thereto within three marine leagues of the coast"[2].

7.4 As can be seen from Map 3.1 facing page 14, the islands of Ligitan and Sipadan are located more than three marine leagues (nine nautical miles) from the coast and therefore could not have been included in the grant even if they had formed part of the Sultan of Sulu's possessions which, as will be explained further on, they did not[3].

7.5 Following this transfer, the Dent brothers addressed a petition to the British Government for a Royal Charter to administer the territory.

7.6 Meanwhile, the grant to Overbeck and Dent in North Borneo raised concerns in Dutch circles. In diplomatic correspondence with the Dutch, Great Britain continued to maintain that the 1824 Anglo-Dutch Treaty discussed in paras. 3.9-3.17, did not apply to the island of Borneo. Britain did go so far as to concede however, in both internal reports and in its correspondence with the Dutch that the object of Her Majesty's Government was not to set up any territorial dominion over the area or to become engaged in a controversy over territorial claims[4].

7.7 During the deliberations for the grant of the Royal Charter, it became apparent that the boundaries of the territory which should be included in the Charter as being under the dominion of the company were not clearly defined, particularly with regard to the Dutch claims on the south-east coast[5]. Although the Dutch authorities were reassured that the Dent and Overbeck company was a genuinely private concern, they continued to monitor the situation in order to ensure that the British enterprise did not acquire a political character and take the guise of a protectorate.

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[2] For the original Agreement, see, Inclosure No. 142 to the despatch from Acting Consul- General Treacher to the Earl of Derby dated 22 January 1878, Annex 17, Vol. 2.

[3] See, paras. 7.22-7.29, below.

[4] See, para. 3.36.

### B. The Formation and Administrative Boundaries of the British North Borneo Company

7.8 In May 1882, the chartered company was officially formed under the name of British North Borneo Company. To the extent that the final text of the Charter contained any description of the territory controlled by the BNBC, it referred to the three separate territorial concessions made by the Sultan of Brunei on 29 December 1877 and to the grant made by the Sultan of Sulu on 22 January 1878.

7.9 The first concession of the Sultan of Brunei concerned the west coast of Borneo, and the second the territories "from the Sulaman River on the north-west coast of Borneo unto the River Paitan on the north-east coast of the island containing twenty-one states together with the island of Banguey and all the other islands within three marine leagues of the coast"[6]. The third grant comprised "the States of Paitan, Sugut, Bungaya, Labuk, Sandakan, Kina Batangan, Mumiang, and all the territories as far as the Sibuco River with all the islands within three marine leagues of the coast"[7]. With respect to the grant made by the Sultan of Sulu, it encompassed the territories "commencing from the Pandassan River on the north-west coast and extending along the whole east coast as far as the Sibuco River... with all the islands within three marine leagues of the coast"[8].

7.10 As can be seen, pursuant to these grants, the coastal territories of the BNBC only extended out to a distance of three marine leagues from the coast, thus encompassing all islands that fell within that distance. The BNBC enjoyed no jurisdiction ov[illegible]ands, such as Sipadan and Ligitan, lying further out to sea.

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[5] *Notes on the North Borneo Charter* by Sir J. Pauncefote dated January 1882, p. 21, Annex 24, Vol. 2.
[6] See, the Royal Charter reproduced in Annex 23, Vol. 2.
[7] *Ibid.*
[8] *Ibid.*, p. 2.

7.11 As noted in Chapter III, on 12 May 1888 the British Government entered into an agreement with the BNBC to establish the State of North Borneo. The agreement made the State of North Borneo, like Brunei and Sarawak, a British protected State, with the British Government assuming responsibility for its external relations with foreign States[9]. As for the extent of the territories comprising the State of North Borneo, the agreement simply referred back to the territorial description contained in the Royal Charter. In this respect, it is significant that Clause 16 of the Charter provided that, if the British Secretary of State saw fit to object to the exercise by the BNBC of any authority within any part of its territories on the grounds that there was an adverse claim, the company would defer to that objection. It was thus clearly envisaged that the territorial claims of the Sultans of Brunei and Sulu, on which the BNBC's grants were based, might be too extreme and thus subject to adverse claims by third parties which would then fall to be resolved by the Government. As noted in para. 5.14, above, this was what led Sir Julian Pauncefote to observe in 1889 that:

> "HMG have reserved to themselves in the Charter of the Coy [Company] the right of ascertaining, in case of a difference with a foreign State as to Boundaries, whether the title of the Coy to the territory in dispute is invalid, and ... of imposing on them their decision"[10].

7.12 The establishment of North Borneo as a British protected State did, in fact, trigger negotiations between the Dutch and British Governments to resolve the boundary between their respective territorial possessions in the area. These negotiations culminated in the signature of the Convention of 20 June 1891 settling the boundary issue.

7.13 At that time, the State of North Borneo was divided into nine provinces as established by the 1888 Agreement between the British Government and the BNBC. Map 6.4, facing p. 119, shows the internal division of the State of North Borneo into these provinces, with an enlargement of the relevant portion of the map[11]. It should be noted that this map, which was published by Stanford in August 1903, shows that the limits of the BNBC's administrative districts encompassed islands lying off the coast of North Borneo. Significantly, the southernmost limits of the Elphinstone Province coincided with the 1891 line drawn seaward from the island of Sebatik.

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[9] The text of the Agreement is contained in Annex 34, Vol. 2.

[10] Memorandum by Sir J. Pauncefote dated 23 February 1889, Annex 43, Vol. 2.

7.14 The relevance of this line has been discussed in connection with the 1891 Convention in Chapters V and VI above. Given Stanford's role as the official cartographer for the BNBC, the map represented an authoritative depiction of the limits of the BNBC's territory. As can be seen, Sipadan island clearly lies to the south of the southernmost limits of the Elphinstone Province. Ligitan is too small to be shown on the map, but it too lies south of the 1891 line. As such, the Stanford's map is compelling evidence that the islands of Sipadan and Ligitan were not viewed by the BNBC as falling within the its territories.

7.15 On 22 April 1903, the British Government entered into a "Confirmation of Cession of Certain Islands" with the Sultan of Sulu[12]. By this instrument, the Sultan of Sulu confirmed that a number of islands lying beyond three marine leagues from the mainland coast of North Borneo were deemed to be within the scope of the Sultan's original grant to the Government of British North Borneo. These islands were identified as follows: Muliangin, Muliangin Kechil, Malawali, Tegabu, Bilian, Tegaypil, Lang Kayen, Boan, Lehiman, Bakungan, Bakungan Kechil, Libaran, Taganack, Beguan, Mantanbuan, Gaya, Omadal, Si Amil, Mabol, Kepalai, Dinawan, and "the other islands that are situated alongside, or round or between the islands that are above mentioned". The Confirmation of Cession went on to indicate that:

> "This is done because the names of the islands were not mentioned in the agreement made with Baron de Overbeck and Mr. Alfred Dent on the 19th Maharam 1295, corresponding with the 22nd January 1878. It was known and understood between the two parties that the islands were included in the cession of the districts and islands mentioned in the above stated Agreement".

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[11] This map also appears in the Map Atlas as map No. 9.

[12] Annex 99, Vol. 3.

7.16 Map 7.1, facing page 135, shows the location of the islands referred to in the Confirmation of Cession. It can be seen that all of the islands mentioned in the Confirmation lie to the north of the 4° 10' N line of latitude established by the 1891 Convention as the boundary between the territorial possessions of The Netherlands and Great Britain. This explains why the official Stanford map of the administrative divisions of North Borneo, which was published four months after the Confirmation of Cession, includes the islands mentioned in the Confirmation as falling within the provinces of British North Borneo while depicting the southernmost limits of the provinces as coinciding with the 1891 line.

### C. Conclusions As to the Position of Great Britain

7.17 From the foregoing discussion, it can be seen that the Dent and Overbeck concessions obtained from the Sultans of Brunei and Sulu did not include the islands of Sipadan and Ligitan. The islands lay beyond three marine leagues from the coast of Borneo and south of any area claimed by Britain. In contrast, in the February 1877 decree of the Netherlands Indies Government, the territories claimed to be Dutch included "Sebatik and the small islands adjacent thereto", and the description of the State of Boeloengan went as far north as Batoe Tinagat, well to the north of the island of Sebatik[13].

7.18 The southern territorial boundaries between British North Borneo and Dutch possessions in the area were subsequently fixed by the 1891 Convention. As noted in Chapter V, following the signature of the Convention the Dutch, in 1893, agreed an amendment of the territorial description of Boeloengan so as to read:

> "... The islands of Tarakan and Nanoekan, and that portion of the Island of Sebatik, situated to the south of the above boundary-line described in

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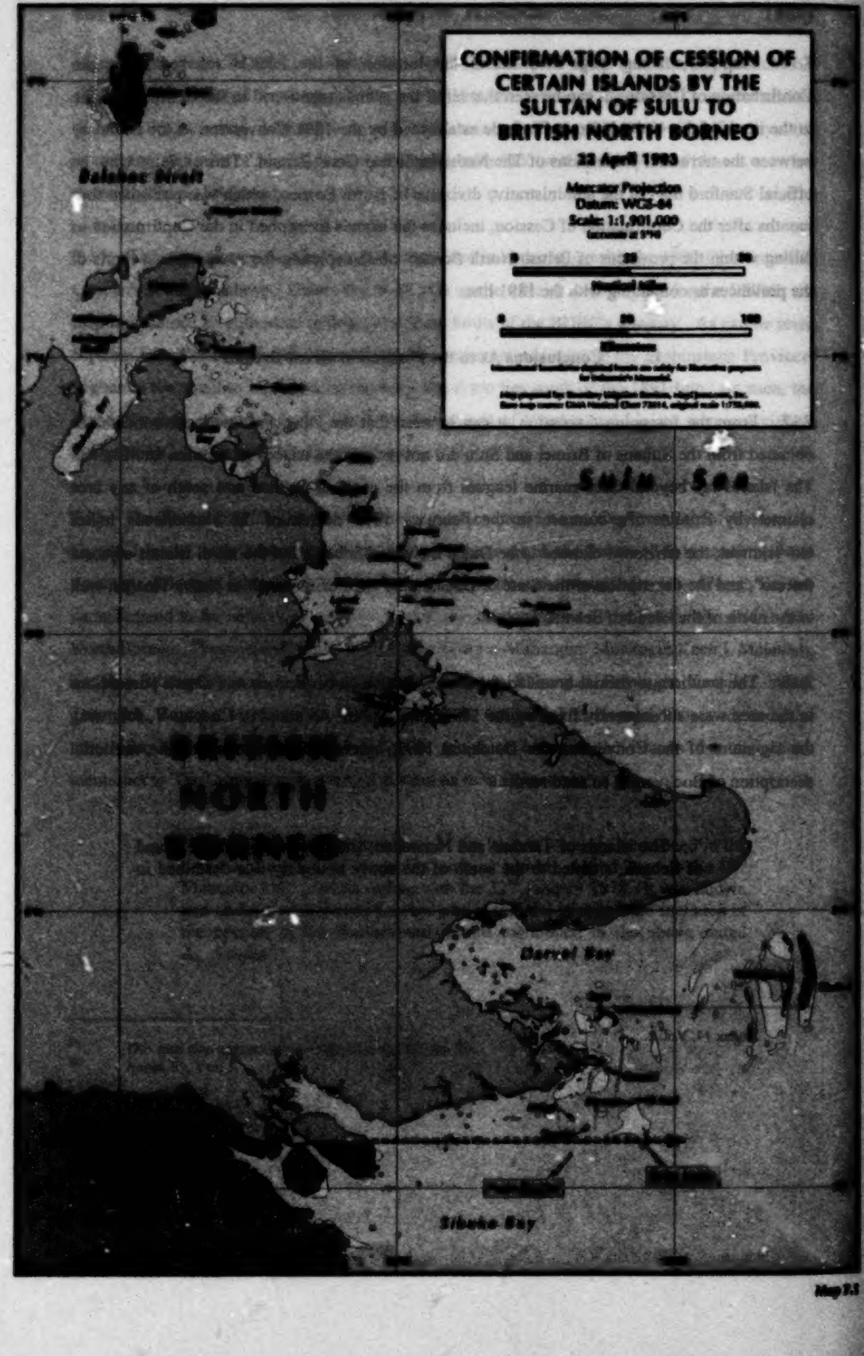
[13] Annex 14, Vol. 2.


CONFIRMATION OF CESSION OF CERTAIN ISLANDS BY THE SULTAN OF SULU TO BRITISH NORTH BORNEO
22 April 1903
Mercator Projection
Datum: WGS-84
Scale: 1:1,901,000
0
25
50
Nautical Miles
0
50
100
Kilometers
Balabac Strait
Sulu Sea
BRITISH NORTH BORNEO
Darvel Bay
Sibuko Bay

Map 7.1

> the *Indisch Staatblad* of 1892, No. 114 belong to Boeloengan, as well as the small islands belonging to the above islands, so far as they are situated to the south of the boundary-line...[14].

7.19 The Dutch informed the British Government of this amendment in 1895. Just as the British Government did not object to the Dutch map attached to the Explanatory Memorandum which showed the territorial boundary extending out to sea to the north of Sipadan[15], so too the British Government did not protest, or dissent from, this amended description of Dutch possessions.

7.20 The 1903 Confirmation of Cession specified a number of islands lying beyond the three marine league limit that were also deemed to appertain to British North Borneo. Neither Sipadan nor Ligitan were included in the Confirmation. Indeed, all of the islands specified in the Confirmation were situated north of the 4° 10' N latitude. Consistent with both the 1891 Convention and the Confirmation of Cession, the 1903 Stanford Map of the BNBC also depicted the southern limits of British North Borneo as coinciding with the 4° 10' N latitude.

7.21 In sum, the record shows that neither Sipadan nor Ligitan were considered by the British Government or the BNBC as falling within the concessions granted to Dent and Overbeck or to appertain to British North Borneo. The islands were consistently treated as Dutch possessions.

### Section 2. The Position of Spain

7.22 In the light of the Spanish presence in the Philippines during the last half of the 19th century, it is appropriate at this point to review Spain's relations with Great Britain with respect to the relevant area. As will be seen, there is no evidence that Sipadan or Ligitan were ever considered to be Spanish possessions or, by virtue of Spain's protectorate over the Sultan of Sulu's domains, as forming part of the Sultan's territories.

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[14] See, para. 5.62, above.

[15] See, para. 5.63, above.

**7.23 As noted in Chapter III, in 1851 the Sultan of Sulu entered into an Act of Submission with Spain by which the territories of Sulu were annexed to the Spanish Crown[16]. As for the extent of the Sultan of Sulu's territories annexed by Spain, these had been identified in the Capitulations of Protection and Commerce between Spain and the Sultan of 23 September 1836 where Spain guaranteed protection to the Sultan:**

> **"... throughout the whole extent of the islands which lie within the limits of Spanish right and, which stretch from the western extremity of Mindanao to Borney and La Paragua [Palawan] with exception of Sandacan and the other territories tributary to the Sultan on the mainland of Borney"[17].**

**7.24 While this definition lacked geographic precision, a glance at a map reveals that the islands of Sipadan and Ligitan lay well to the south and west of any areas that could realistically be considered to lie between Mindanao and the North Borneo mainland. It is also instructive in this connection to refer to the Spanish view as to the limitations on the definition of the "Sulu Archipelago" proper, set out in a 1927 entry in the *Enciclopedia Universal Ilustrada Espasa*, published after the signing of the Treaty of Paris, indicating that the Sulu Archipelago:**

> **"... is situated between 4° 40' and 8° north latitude and 119° 8' and 122° 22' of east longitude east of Greenwich Meridian; the extreme points are the atolls of the Sibutu group to the south-west .... The Archipelago is bounded in the north by the Sulu Sea, to the south by the Celebes Sea, to the north-east by the Basilan Channel, which separates it from Mindanao, and to the south-west by the Sibutu Channel, which separates it from Borneo"[18].**

**7.25 Sipadan and Ligitan therefore never formed part of the Sulu Archipelago, and they were not part of the Sultan of Sulu's Bornean dominions either. This is confirmed by an examination of the territories that Spain ceded to the United States after the Spanish-American War – a matter which is taken up in the next section.**

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**[16] See, para. 3.33, above. A useful summary of Spain's relations with the Sultan of Sulu appears in a letter written by the U.S. Secretary of State to the Secretary of the Navy on 3 April 1903, Annex 98, Vol. 3.**

**[17] Annex 9, Vol. 2.**

**[18] Annex 124, Vol. 4.**

7.26 On 11 March 1877, one year before the grant to Dent and Overbeck, Spain signed a Protocol with Great Britain and Germany in order to resolve a trade dispute that had arisen in connection with Spanish interference with British and German vessels trading with the Sulu Archipelago[19]. Declaration I of the Protocol provided that commerce, fishing and navigation were to be "absolutely free" for the vessels and subjects of Great Britain and Germany "in the Archipelago of Sulu (Joló), and in all parts thereto" without prejudice to the rights of Spain in the area. Thereafter, discussions among the colonial powers (not including The Netherlands) continued, attempting to clarify the scope of the sovereignty of the Sultanate of Sulu and hence the authority of Spain[20].

7.27 Great Britain, in turn, rejected all Spanish claims to Sulu and its dependencies as "a merely nominal claim over a certain undetermined part of Borneo"[21]. Britain thereafter suggested that the definition should "include the mainland that is subject to the dominion of the Sultan of Sulu, the adjacent islands of Balambangam, Baguey and Malawali and all islands and islets within three maritime leagues of the coast", but this was rejected initially by the Spanish negotiators on the ground that the zone of three maritime leagues did "not correspond to the jurisdictional limits which have up to now been accepted by other Nations" and that "the innovation would put our cruisers in a difficult position as regards policing those seas which are so important for us to patrol"[22].

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[19] Annex 15, Vol. 2.

[20] Among the Parliamentary Documents prepared for presentation before the Spanish Parliament during the legislative session of 1885 on the questions of Sulu and Borneo there was reproduced a letter of 22 March 1882, addressed by the Plenipotentiary Minister of the Queen in London to the Minister of State, indicating what the British understanding at the time was of the extent of the Sulu Archipelago—as defined by Article 1 of the Treaty of 1836 between Spain and the Sultan of Sulu—and including within its scope the islands of Balabac and Cagayan Sulu. The letter specifies further that: *"La parte correspondiente á Borneo ... abrace la tierra firme tributaria del Sultan de Joló, las islas adyacentes de Balambangan, Baguey, Malawally y todas las islas é isletas comprendidas dentro de tres leguas marítimas de la costa"*. "The part [of the territory of the Sultan of Solo] relating to Borneo ... includes the mainland that is subject to the dominion of the Sultan of Sulu, the adjacent islands of Balambangam, Baguey and Malawali and all islands and islets within three maritime leagues of the coast". Annex 25, Vol. 2.

[21] *Notes on the North Borneo Charter* by Sir J. Pauncefote dated January 1882, p. 34, Annex 24, Vol. 2.

[22] Letter from the Minister of State to the Plenipotentiary Minister in London dated 31 March 1882, Annex 26, Vol. 2. The original Spanish text read as follows: *"Este último punto es de la mayor importancia, porque esta zona no corresponde á los límites jurisdiccionales hasta ahora aceptados por otras Naciones, y la innovacion colocaría á nuestros cruceros en una situacion difícil para ejercer la policía de aquellos mares que tanto nos interesa vigilar"*.

7.28 On 7 March 1885, tripartite discussions between Spain, Great Britain and Germany resulted in the signature in Madrid of a further Protocol among the three signatories of the 1877 Protocol. In its original French, the 1885 Protocol provided as follows:

> "Art. 1er. Les Gouvernements de l'Allemagne et de la Grande Bretagne reconnaissent la souveraineté de l'Espagne sur les points occupés effectivement, ainsi que sur ceux qui ne le seraient pas encore, de l'Archipel de Sulu (Joló), *dont les limites sont établies dans l'article 2.*
> "Art. 2. L'archipel de Sulu (Joló), conformément à la définition contenue dans l'art. 1er. du Traité signé le 23 septembre 1836 entre le Gouvernement Espagnol et le Sultan de Sulu (Joló), *comprend toutes les îles qui se trouvent entre l'extremité occidentale de l'île de Mindanao, d'une part, et le continent de Bornéo et l'île de Paragua, de l'autre, à l'exception de celles qui sont indiquées dans l'art. 3.*
> "Il est entendu que les îles de Balabac et de Cagayan-Joló font partie de l'Archipel.
> "Art. 3. Le Gouvernement Espagnol renonce vis-à-vis du Gouvernement Brittanique, à toute prétention de souveraineté sur les territoires de Bornéo qui appartiennent, ou qui ont appartenu dans le passé, au Sultan de Sulu (Joló), y comprises les îles voisines de Balambangan, Banguey et Malawali, *ainsi que toutes celles comprises dans une zone de trois lieues maritimes le long des côtes et qui font partie des territoires administrés par la Compagnie dite "British North Borneo Company"*"[23].

7.29 It can thus be seen that Sipadan and Ligitan did not constitute part of the Sulu Archipelago. Nor were they part of the cession to Great Britain under the 1885 Protocol, which was consistent with the 1878 Dent and Overbeck concession in limiting British offshore rights to islands that fell within three marine leagues of the coast. By parity of reasoning they also could not have formed part of the cession to the United States after the Spanish-American War – a matter which is confirmed by examining the extent of the territories ceded by Spain in 1898 and 1900. They were, clearly, not considered as Spanish (or Sulu) possessions. They were actually Dutch possessions, and The Netherlands had remained outside of these discussions - for good reason, as her presence was not required and her interests not directly at stake.

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[23] Annex 33, Vol. 2. The following translation of the Protocol reproduced in the same annex was prepared by the British Foreign Office:
"I. The Government of Great Britain and Germany recognize the sovereignty of Spain over the places effectively occupied as well as over those places not yet so occupied, of the archipelago of Sulu (Joló), *whereof the boundaries are determined in Article II.*
II. The Archipelago of Sulu (Joló), conformably to the definition contained in Article 1 of the Treaty signed the 23rd of September 1836, between the Spanish Government and the Sultan of Sulu (Joló) *comprises all the islands which are found between the western extremity of the island of Mindanao on the one side, and the continent of Borneo and the Island of Paragua (Palawan) on the other side, with exception of those which are indicated in Article III.* It is understood (entendu) that the island of Balabac and of Cagayan-Joló form part of the Archipelago.
III. The Spanish Government relinquishes as far as regards the British Government, all claim of sovereignty over the territories of the Continent of Borneo which belong, or which have belonged in the past to the Sultan of Sulu (Joló), including therein the neighboring Islands of Balambangan, Banguey and Malawali, *as*

## Section 3. The Position of the United States

### A. The United States' Acquisition of the Philippine Islands in 1898 and 1900

7.30 Following its defeat in the Spanish-American War, Spain ceded the Philippine archipelago to the United States through the Treaty of Peace signed in Paris on 10 December 1898. Article III of the Treaty is of particular relevance. It defined the Philippines as follows:

> "ARTICLE III
> "Spain cedes to the United States the archipelago known as the Philippine Islands, and comprehending the islands lying within the following line:
> A line running from west to east along or near the twentieth parallel of north latitude, and through the middle of the navigable channel of Bachi, from the one hundred and eighteenth (118th) to the one hundred and twenty seventh (127th) degree meridian of longitude east of Greenwich, thence along the one hundred and twenty seventh (127th) degree meridian of longitude east of Greenwich to the parallel of four degrees and forty five minutes (4° 45') north latitude, thence along the parallel of four degrees and forty five minutes (4° 45') north latitude to its intersection with the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119° 35') east of Greenwich, thence along the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119° 35') east of Greenwich to the parallel of latitude seven degrees and forty minutes (7° 40') north, thence along the parallel of latitude seven degrees and forty minutes (7° 40') north to its intersection with the one hundred and sixteenth (116th) degree meridian of longitude

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*well as all those islands lying within a Zone of three marine leagues along the coasts and which form part of the territories administered by the Company styled 'British North Borneo Company'".* (Emphasis added).

> east of Greenwich, thence by a direct line to the intersection of the tenth (10th) degree parallel of north latitude with the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich, and thence along the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich to the point of beginning"[24].

7.31 Map 7.2, facing this page, illustrates the extent of the Philippine islands according to this geographic definition in Article III of the 1898 Treaty. As can be seen from the map, the islands of Ligitan and Sipadan are situated well outside of the line surrounding the Philippine Archipelago thus further confirming the fact that neither Spain nor the Sultan of Sulu could be regarded as ever having a claim over them.

7.32 On 7 November 1900, the United States entered into a further treaty with Spain for the cession of certain remaining Philippine islands, i.e., islands lying outside the boundary line set out in Article III of the 1898 Treaty. The 1900 Treaty contained only one substantive provision, which read as follows:

> "SOLE ARTICLE
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> "Spain relinquishes to the United States all title and claim of title, which she may have had at the time of the conclusion of the Treaty of Peace of Paris, to any and all islands belonging to the Philippine Archipelago, lying outside the lines described in Article III of that Treaty and particularly to the islands of Cagayan Sulú and Sibutú and their dependencies, and agrees that all such islands shall be comprehended in the cession of the Archipelago as fully as if they had been expressly included within those lines"[25].

7.33 As can be seen from Map 7.2, on which the two additional islands covered by the 1900 Treaty have been highlighted, the Philippine Archipelago as defined in both of these treaties taken together never reached as far south as to include the area where Ligitan and Sipadan are located.

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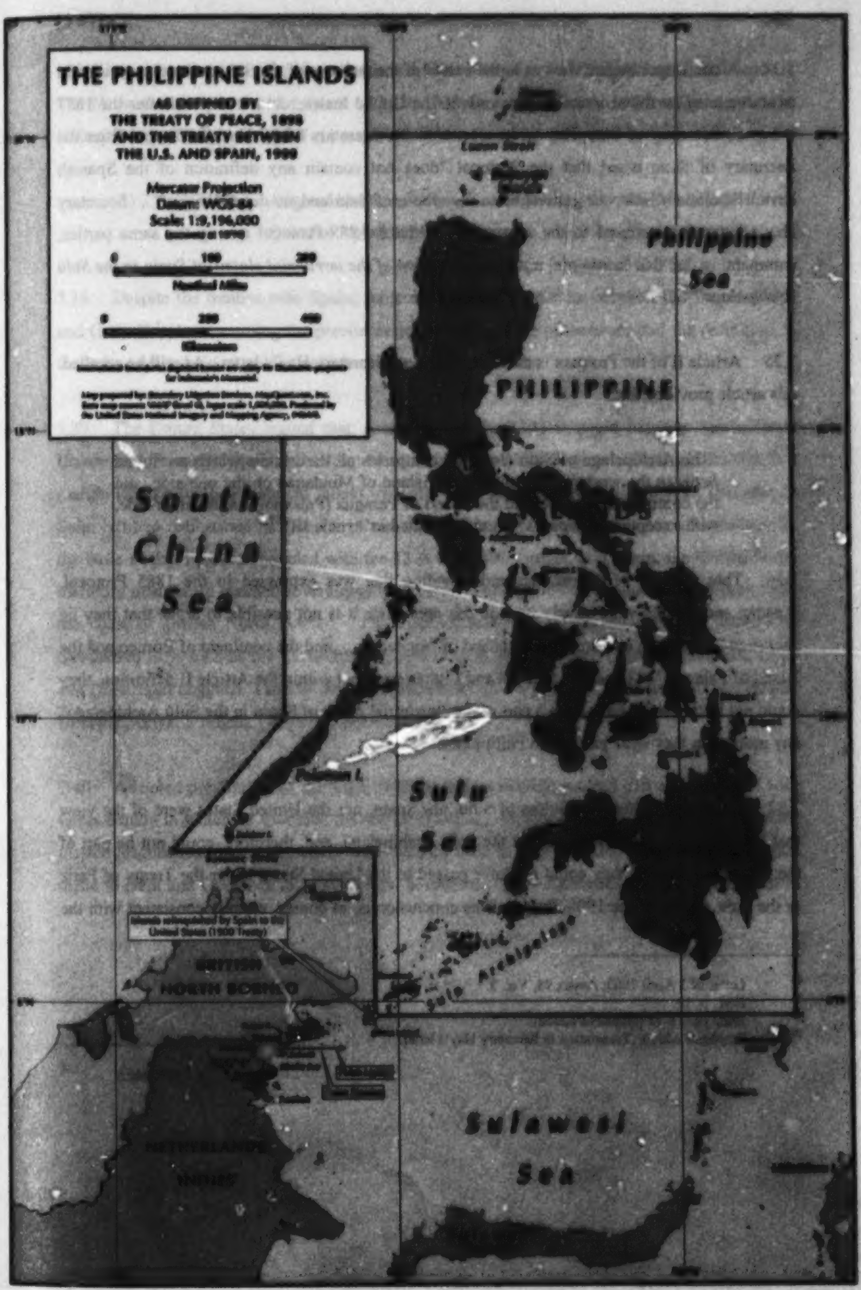
[24] Annex 93, Vol. 3.

[25] Annex 94, Vol. 3.


THE PHILIPPINE ISLANDS
AS DEFINED BY
THE TREATY OF PEACE, 1898
AND THE TREATY BETWEEN
THE U.S. AND SPAIN, 1900
Mercator Projection
Datum: WGS-84
Scale: 1:9,196,000
0
100
200
Nautical Miles
0
200
400
Kilometers
Luzon Strait
Philippine Sea
PHILIPPINE
South China Sea
Palawan I.
Sulu Sea
Islands relinquished by Spain to the United States (1900 Treaty)
BRITISH NORTH BORNEO
Sulu Archipelago
NETHERLANDS INDIES
Sulawesi Sea

Map 7.2

7.34 A contemporaneous view as to the extent of the territory of the Sulu archipelago, referred to above, may be found in archival records in the United States. Some 25 years after the 1877 Protocol, Secretary of State Hay wrote a letter to the Secretary of the Navy[26]. In that letter the Secretary of State noted that the Protocol "does not contain any definition of the Spanish territorial claim which was general as to the whole of Sulú and its dependencies"[27]. Secretary Hay's letter then referred to the subsequent 7 March 1885 Protocol among the same parties, commenting that this "contain[s] *a precise definition of the territorial claims of Spain in the Sulú Archipelago*"[28].

7.35 Article II of the Protocol is cited at page 12 of Secretary Hay's letter. As will be recalled, this article provided that:

> "The Archipelago of Sulú (Joló) ... comprises all the islands which are found *between* the western extremity of the Island of Mindanao on the one side, and the continent of Borneo and the Island of Paragua (Palawan) on the other side, with exception of those which are indicated in Article III"[29].

7.36 This reflects, of course, the understanding that was expressed in the 1885 Protocol. Sipadan and Ligitan were clearly outside this area since it is not possible to argue that they lie "*between* the western extremity of the Island of Mindanao ... and the continent of Borneo and the Island of Palawan". Given that Sipadan and Ligitan were not within the Article II definition, they could not in that sense have been a part of the "territorial claim of Spain in the Sulú Archipelago" any more than they were part of the Philippines.

7.37 Given that neither the Sultan of Sulu, nor Spain, nor the United States were of the view that Sipadan and Ligitan were part of the Sulu Archipelago, and, therefore, could not be part of the Philippine islands, they could not have passed to the United States under the Treaty of Paris or the Sole Article of the 1900 Treaty. This conclusion is, of course, entirely consistent with the

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[26] Letter of 3 April 1903, Annex 98, Vol. 3.

[27] *Ibid.*, p. 10.

[28] *Ibid.*, pp. 11-12 (emphasis added).

[29] Emphasis added. Translation in Secretary Hay's letter.

1891 Convention between The Netherlands and Great Britain, which had attributed the islands to The Netherlands. It is also consistent with the 1930 Convention between Great Britain and the United States, which is discussed at paras. 7.52-7.56, below.

## B. Anglo-American Discussions regarding Certain Islands off the Coast of North Borneo

7.38 Despite the treaties with Spain, some confusion remained as between the United States and Great Britain concerning the precise extent of the Spanish possessions and the definition of the Sulu Archipelago to which the United States could lay claim.

7.39 The United States argued that, according to the 1885 Protocol between Spain, Great Britain and Germany, Spain had relinquished its claim to North Borneo and all islands within 3 marine leagues (or nine nautical miles) from the coast in return for recognition of its rights in Sulu, but had maintained its claim to islands situated beyond three leagues from the coast. On the basis of that Protocol, coupled with the 1898 and 1900 treaties with Spain, the United States therefore mistakenly claimed sovereignty over certain islands outside the three-league limit from the coast of British North Borneo. The disputed islands included mostly those located in Sandakhan Bay, such as the Turtle islands, including Sibaung, Boaan, Lihiman, Langaan, Little and Great Bakkunggaan, Taganak and Baguan, and others such as the Mangsee islands, Tutagan, Dinawan, Gaya, Silingan, Langavan, Boaan and Gulisan.

7.40 As noted previously, on 22 April 1903 the Sultan of Sulu entered into an agreement with Great Britain in which he specified the names of certain additional islands lying more than three marine leagues from the coast which were deemed to have been included in the original cession made to Dent and Overbeck in 1878[30]. The conclusion of this Agreement caused some alarm in

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[30] Annex 99, Vol. 3.

U.S. quarters since it concerned islands which, by virtue of being situated beyond three marine leagues from the coast, could hypothetically have been included within the U.S. possessions. Subsequently, the United States decided to send one of its vessels to the area to assert its rights[31]. In June 1903, the gunboat U.S.S. *Quiros* was sent on a trip around some of the islands off the coast of North Borneo, during which flags and tablets were erected[32]. According to the Captain's log book from 27 November 1902 to 23 June 1903, Ligitan and Sipadan were not visited and no flag or sovereignty tablet was erected on either island[33]. However, a later log book shows that, on 24 June 1903, the island of Sipadan had been visited by the *Quiros* and a U.S. flag posted on it[34]. There is no record of the vessel actually stopping on Ligitan.

7.41 The exchanges between the U.S. State Department and the U.S. Secretary of War subsequent to the *Quiros'* trip indicate that the State Department remained far from certain that the disputed islands fell within the dominions of the Sultan of Sulu. A letter sent by John Hay to the U.S. Acting Secretary of War on 23 October 1903 commented on a line "drawn ex parte" on the basis of a chart received from the Navy's Hydrographic Office, and noted as follows:

> "1. The prolongation of the red tracing from the east-ward of Sibuty to and around Sipidan Island and thence north-wardly to Darval Bay would probably require to be supported by evidence that Sipidan and the included keys and rocks had been recognized as lying within the dominions of Sulu described in the conventions between Spain on the one hand and Great Britain and Germany on the other. *This is a question of fact which the Department of State has no means of determining and considering which an opinion would be mainly ex parte.* The treaty of Nov. 7, 1900, by expressly including the Island of Sibutu may have intended such inclusion as exceptional and as a limit to the claims of Spanish dominion to the South-west of the Sulu group"[35].

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[31] See, Foreign Office note entitled *Administration by British North Borneo Company of certain United States islands* dated 23 November 1922, Annex 121, Vol. 4. See, also, letter from British North Borneo Company to Foreign Office dated 13 July 1903, Annex 102, Vol. 3.

[32] Correspondence from the Captain of U.S.S. *Quiros* dated 19 and 24 June 1903, Annex 100, Vol. 3.

[33] Log book of U.S.S. *Quiros* dated 27 November 1902 to 23 June 1903, Annex 97, Vol. 3.

[34] See, log book of U.S.S. *Quiros* dated 24 June 1903 to 13 January 1904, Annex 101, Vol. 3, and U.S. cable of 1 August 1903, Annex 103, Vol. 3.

[35] Emphasis added. See, Annex 104, Vol. 3.

7.42 On 15 December 1903, the U.S. Secretary of War asked the State Department which islands it considered to be included in the description "any and all islands belonging to the Philippine Archipelago, lying inside of the line described in Article 3 of that treaty (the treaty of Paris) contained in the treaty with Spain, signed Nov. 7th, 1900"[36]. The State Department not having replied to this request, the War Department asked that, until the State Department had taken an official position regarding the boundary, all official maps contain a reference to the relevant treaties (the 1885 Protocol, 1898 Peace Treaty and the 1900 Treaty). According to U.S. sources, as of October 1906 the State Department had not "yet laid down the official position of the boundary line"[37].

7.43 Whatever the reasons behind the U.S.S. *Quiros'* visit, the exchanges of correspondence between the British and U.S. authorities regarding that episode do not mention the islands of Ligitan and Sipadan nor do they evoke - as relevant to the discussions - the 1891 Convention[38].

7.44 The BNBC was informed of the *Quiros'* visit to the Turtle islands and other islands off the port of Sandakhan and protested its activities as it considered these islands part of British possessions in the area[39]. The British Government argued, on behalf of the BNBC, that the islands had been administered first by the Chartered Company, since 1881, and then by the North Borneo Government as an integral part of their territory under British rule. British administration of these islands had never been contested by the Spanish or the U.S. Governments until the visit of the *Quiros* in 1903[40].

7.45 By March 1904, any significance that might have been attributed to the voyage of the *Quiros* had been even further diluted. Secretary Hay wrote to the Secretary of the Navy with the suggestion "that perhaps it might be as well for you to give an order to our naval officers in those waters to abstain from any assertion of our sovereignty or any act of possession of these islands while the subject is under discussion"[41].

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[36] See, letter from the Director of Coast Surveys dated 13 October 1906, Annex 111, Vol. 3.

[37] *Ibid.*

[38] For a description of the British position, see, Foreign Office note entitled *Administration by British North Borneo Company of certain United States islands* dated 23 November 1922, Annex 121, Vol. 4. See, also, letter from British North Borneo Company to Foreign Office dated 13 July 1903, Annex 102, Vol. 3.

[39] Annex 102, Vol. 3.

[40] *Ibid.*, paras. 11 and 14.

7.46 Some years later, in the *Island of Palmas* Arbitration, the U.S. Memorandum referred to a 1902 map, stating that "[t]he map indicates by a black dashed line, reinforced in color, the limits of sovereignty of the United States of America in the waters adjacent to the Philippine Islands", but excluding the area around Sipadan and Ligitan from the area of the dashed lines[42].

7.47 Eventually, the British Government came around to the U.S. position and concluded that, since the treaties entered into by the Sultan of Sulu with the BNBC concerned only the islands within three marine leagues from the coast of North Borneo, the U.S. claims to islands lying beyond that limit might have some foundation[43]. Britain therefore sought to reach an accommodation with the U.S. Government whereby the Government of British North Borneo continued to administer the islands and supervise the policing of smuggling and pirate activities whilst recognising U.S. rights to the islands[44].

7.48 On 23 June 1906, the British Ambassador in Washington Sir Mortimer Durand, addressed a Memorandum to the U.S. Secretary of State Elihu Root suggesting a solution to the dispute[45]. While he noted that the BNBC did not intend to prepare a map showing the line dividing North Borneo from U.S. territory, he did offer the following proposal:

> "2. The company would like to be left undisturbed in the administration of the islands without any detailed agreement, the United

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[41] Letter from U.S. Secretary of State to Secretary of the Navy dated 2 March 1904, Annex 106, Vol. 3.

[42] *Island of Palmas* case, U.S. Memorandum, p. 46. The map referred to is Map No. 8 in the Map Atlas. The map is overprinted with "S Doc 280 57 1" in the lower right, indicating that it was taken from *A Pronouncing Gazetteer and Geographical Dictionary of the Philippine Islands* (Washington, D.C., U.S. Government Printing Office, 1902), U.S. Senate Doc. 280, 57th Congress, 1st Session and that it had been submitted to the United States Senate.

[43] See, Foreign Office Memorandum, entitled *The claim of the British North Borneo Company to certain islands lying off the coast of Borneo which were formally taken possession of by the American warship "Quiros" in 1903* (communicated to the British North Borneo Company) dated 10 March 1905, Annex 109, Vol. 3.

[44] Foreign Office Memorandum entitled *Administration by British North Borneo Company of certain United States island* dated 23 November 1922, p. 228, Annex 121, Vol. 4.

[45] Annex 110, Vol. 3.

> States Government simply waiving in favor of the company their right to administer...".

7.49 The U.S. Secretary of State accepted this proposal in the following terms:

> "... namely, that the company be left undisturbed in the administration of the islands, without any detailed agreement, the United States Government simply waiving in favor of the company their right to such an administration in the meantime .... It might be agreed that such an understanding shall be with the British Government, acting on behalf of the interests of British subjects; that it shall not carry with it territorial rights (such as those of grants and concessions), that the waiver shall cover the islands to the westward and southwestward of the line traced on the map which accompanied your memorandum of June 23..."[46].

7.50 Finally, the parties agreed, with an exchange of notes which took place in July 1907, to an arrangement reflecting the Durand proposal described above[47]. According to the arrangement, the BNBC would continue its *de facto* administration of certain islands situated beyond the three marine league limit. The arrangement was without prejudice to a final delimitation of the boundary and could be terminated at a year's notice by either party.

7.51 While it is important to understand the historical background of these exchanges to place the issue in context, any ambiguity concerning the division of the territorial possessions of Great Britain and the United States was definitively settled in 1930 when the two States signed a Convention dividing their respective jurisdictions in the area.

### C. The Convention of 2 January 1930 between Great Britain and the United States

7.52 In 1922, the United States, which had undertaken to grant autonomy to the Philippines "as soon as a stable Government could be established", started to press the BNBC to hand over to the

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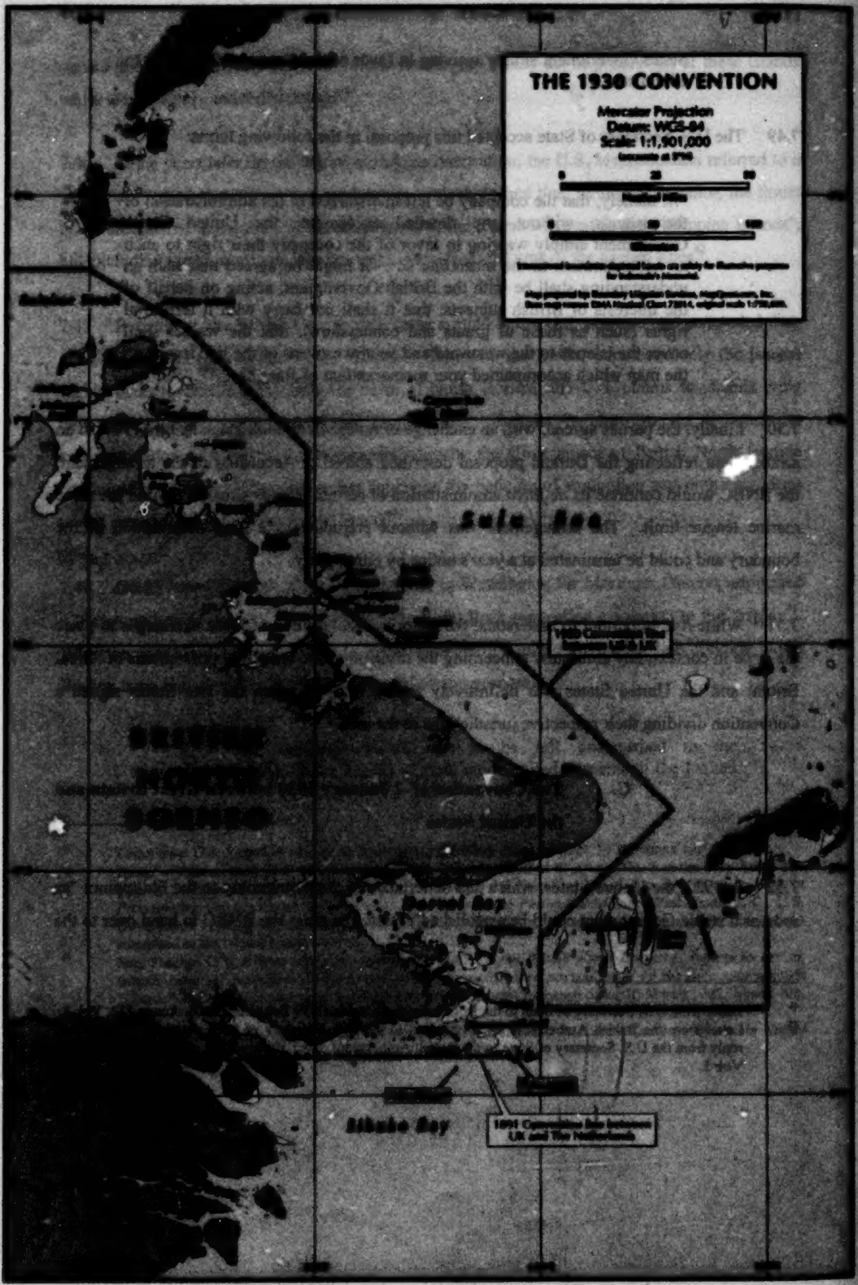
[46] Letter from U.S. Secretary of State to the British Ambassador dated 19 December 1906, Annex 112, Vol. 3.

[47] Letter from the British Ambassador in Washington to the U.S. Secretary of State dated 3 July 1907 and reply from the U.S. Secretary of State to the British Ambassador dated 10 July 1907, Annexes 113 and 114, Vol. 3.


THE 1930 CONVENTION
Mercator Projection
Datum: WGS-84
Scale: 1:1,901,000
0 25 50
Nautical Miles
0 50 100
Kilometers
Balabac Strait
Sulu Sea
1930 Convention line between US & UK
BRITISH
NORTH
BORNEO
Darvel Bay
Sibuko Bay
1891 Convention line between UK and The Netherlands

Map 7.3

Philippines the administration of the Turtle Islands group[48]. Discussions ensued between the British and U.S. Governments on how to measure the three marine league limit, whether to include contiguous islands as part of the mainland, how to deal with islands that intersected the three marine league limit such as Little and Great Bakkungaan, and how to safeguard the proper maintenance of important structures such as the lighthouse on Taganak[49].

7.53 The discussions led to the signature on 2 January 1930 of a convention between Great Britain and the United States setting out the definitive boundary line separating the islands belonging to the United States from those belonging to British North Borneo. The Convention was supplemented by an exchange of notes[50].

7.54 The line described in Article I of the Convention appears on Map 7.3. It is also indicated on charts Nos. 4707 and 4720 published by the U.S. Coast and Geodetic Survey.

7.55 As can be seen from the map, under the 1930 Convention the southern limits of U.S. possessions lay along the 4° 23′ N parallel of latitude, well to the north of Sipadan and Ligitan and to the north of the 4° 10′ N line of latitude established by the 1891 Convention. The western limits of U.S. jurisdiction also fell to the north and east of the islands. Consequently, there was no question of any possible claim of the United States to the islands in issue in this case.

7.56 Map 7.3 also shows the situation between The Netherlands and Great Britain resulting from the 1891 Convention. The limits of each party's possessions had been fixed as lying along the 4° 10′ N latitude east of the island of Sebatik. Based on the treaty history, therefore, both Sipadan and Ligitan were clearly deemed to fall under Dutch sovereignty.

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[48] The Turtle islands were Boaan, Lihiman, Langaan, Great Bakkungaan, Little Bakkungaan, Taganak and Baguan. See, Foreign Office Memorandum entitled *Boundary between British North Borneo and the Philippines*, with map, dated July 1927, p. 7, Annex 123, Vol. 4.

[49] *Ibid.*, pp. 7, 10 and 11.

[50] For a copy of the Convention, Supplementary exchange of notes and attached Charts Nos. 4707 and 4720, published by the United States Coast and Geodetic Survey, corrected to July 24 1929, depicting the boundary line agreed in the Convention, see, Annex 126, Vol. 4.

## Section 4. General Conclusions

7.57 The general conclusions concerning the practice of Great Britain, Spain and the United States in the region can thus be summarised as follows.

7.58 With respect to Great Britain, Sipadan and Ligitan did not fall within the grant to Overbeck and Dent in the light of the fact that they were more than three marine leagues from the Borneo coast. They similarly did not fall within the 1885 Protocol which applied to islands only if they were within three marine leagues of the coast. Nor did they fall within the scope of the 1903 Confirmation of Cession which was limited to islands lying north of the 4° 10' north parallel of latitude.

7.59 With respect to the Sultan of Sulu and Spain, the former did not consider islands such as Sipadan and Ligitan to be within his domain, either as part of the Sulu Archipelago or as part of his Bornean claim. Nor had Spain the slightest pretension to claim features so far south and west of the Sulu Archipelago.

7.60 The 1891 Convention settled the matter of territorial possessions between The Netherlands and Great Britain with islands lying to the south of the 4° 10' N latitude being attributed to The Netherlands. The Dutch map attached to the Explanatory Memorandum – transmitted to the British who did not protest – depicted the line dividing territorial possessions running offshore along the 4° 10' N line to a point north of Sipadan. Moreover, the 1903 Stanford's map depicting the administrative divisions of the BNBC reflected not only the situation created by the 1903 Confirmation of Cession, but also the BNBC's respect for the 1891 line which left Sipadan and Ligitan on the Dutch side of the boundary.

7.61 As for the United States, it is evident from the 1898 and 1900 treaties between Spain and the United States that neither Sipadan nor Ligitan were considered to form part of the possessions owned by Spain and transferred to the United States. Despite sporadic discussions with Great

**Britain in the early part of this century, that ultimately was the position of the United States when it signed the 1930 Convention with Great Britain fixing the southern limits of its possessions well to the north of the 4° 10' N latitude. The islands remained on the Dutch side of the line dividing territorial possessions that had been established in 1891.**

## CHAPTER VIII

## THE EMERGENCE OF THE DISPUTE AND ITS AFTERMATH

8.1 As Chapter III of this Memorial demonstrates, Sipadan and Ligitan islands were never the subject of any dispute between The Netherlands and Great Britain during the colonial period, or between Indonesia and Malaysia following independence. Both colonial powers carried out neighbouring activities, but at no stage did Britain or Malaysia claim sovereignty over the islands, and the extension of the 1891 line was always considered to have divided the respective Anglo-Dutch possessions in the region.

8.2 This is further evidenced by the oil concessions granted by Malaysia to the Japanese company, Teiseki, in 1968 and by Indonesia to another Japanese company, JAPEX, in 1966. Both these concessions scrupulously respected the 4° 10' N parallel line[1].

8.3 It was only during the negotiations held in 1969 concerning the delimitation of the respective continental shelves of the two States that Malaysia evoked an alleged title of sovereignty over the islands of Sipadan and Ligitan. These negotiations are of particular importance as it was at this date that the dispute crystallised, with fundamental legal consequences, in the light of which the subsequent behaviour of the Parties should be reviewed.

8.4 In the present chapter, Indonesia will first set out the development, purpose and legal significance of the 1969 negotiations (Section 1), and then describe the subsequent activities of the Parties in relation to the two islands (Section 2).

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[1] See, paras. 6.10-6.27, above.

## Section 1. The 1969 Negotiations

8.5 From 9 to 22 September 1969, Indonesia and Malaysia entered into negotiations in Kuala Lumpur regarding the delimitation of their respective continental shelves. It was during these discussions that, for the first time, Malaysia claimed sovereignty over Sipadan and Ligitan. At the end of the negotiations the two Parties undertook to respect the *status quo* and to refrain from doing anything which might aggravate the dispute that had arisen as a result of the new Malaysian claims.

### A. The Development of the Negotiations

8.6 Intent on putting to good use the natural resources of their respective continental shelves, the two States set about delimiting the same in the following four maritime zones of interest to them:

- the Strait of Malacca;
- the western sector of the South China Sea (off the eastern coast of Malaysia);
- the eastern sector of the South China Sea (along the eastern coast of Kalimantan and the Malaysian state of Sarawak), and
- the Sulawesi sea (Celebes), along the eastern part of Kalimantan and Sabah.

8.7 With regard to the first three zones, the negotiations culminated, on 27 October 1969, in the Agreement between the Government of the Republic of Indonesia and the Government of Malaysia Relating to the Delimitation of the Continental Shelves between the Two Countries[2]. This was supplemented, with regard to the delimitation of the territorial sea between the two States, by the Treaty Relating to the Delimitation of the Territorial Seas of the Two Countries in the Strait of Malacca, dated 17 March 1970.

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[2] A copy of this Agreement is attached in Annex 136, Vol. 4.

8.8 It is worth noting that these agreements are favourable to the Malaysian side, especially the sections relating to the delimitation of the continental shelves in the eastern sector of the South China Sea where the line of delimitation veers quite considerably from the line of equidistance in favour of Malaysia[3]. This concession on the part of Indonesia was consented to in order to take into account a pre-existing oil concession granted by the British Administration to Shell before the adoption of the 1958 Geneva Conventions; it shows the climate of understanding existing between the participants to the negotiations[4].

8.9 However, the negotiations failed with respect to the fourth maritime zone to the east of Kalimantan and Sabah. It should be noted that the Indonesian delegation did not have instructions on this point and had only accepted that the matter be discussed upon the express request of the Malaysian side[5]. The reason why these negotiations failed was precisely because of the Malaysian side's claims over Ligitan and Sipadan.

8.10 The Malaysian claims over the islands were not made immediately at the beginning of the conference, which commenced on 9 September 1969. Quite to the contrary, at the outset of the negotiations, both the Indonesian and Malaysian participants used the same 1967 British map which clearly showed that the islands, whose possession would later be contested between the Parties, were marked as being included within Indonesian sovereignty[6]. It was only on 18 September that the Malaysian mapping experts put forward Act No. 4 concerning Indonesian waters of 18 February 1960 to contest the delimitation line proposed by their Indonesian counterparts on the basis of the 1967 map[7].

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[3] See, the map contained in Charney, J.I., and Alexander, L.M., *International Maritime Boundaries*, Vol. I, ASIL/Nijhoff, 1991, p. 1024, Annex 136, Vol. 4.

[4] See, Affidavit of Admiral Sunardiman, Annex B, Vol. 5.

[5] Report of the Delegation of the Republic of Indonesia to the Meeting Concerning Delimitation of the Continental Shelf Boundary Between Indonesia and Malaysia, Held in Kuala Lumpur from 9 to 22 September 1969, (unofficial translation), Annex 132, Vol. 4.

[6] See, Affidavit of Prof. Mochtar Kusumaatmadja, Annex A, Vol. 5.

[7] Act No. 4 concerning Indonesian waters of 18 February 1960, in the *State Gazette 1960*, No. 22, Annex 128, Vol. 4.

8.11 It is correct that this law did not take into consideration the two islands when plotting Indonesia's initial archipelagic base-lines. As the affidavit of Admiral Sumardiman explains[8], this was due to the fact that the law was drawn up in haste: Indonesia was, at that moment in time, concerned with gaining recognition for the notion of archipelagic waters at the Second United Nations Conference on the Law of the Sea, and the drafters of Act No. 4 did not preoccupy themselves particularly with ensuring that all the islands forming part of the Indonesian archipelago – an archipelago which comprises more than 17,000 islands - were included; the fundamental point was to establish the concept in law. Moreover, Indonesian technicians used a small scale map which did not depict Sipadan or Ligitan or, indeed, a number of other Indonesian islands.

8.12 Furthermore, Malaysia, which had upheld the Indonesian position on this matter at the Second and Third United Nations Conferences on the Law of the Sea[9], was not of the view that Act No. 4 of 1960 could be opposed to Indonesia when the matter in hand was the delimitation of the continental shelves of the two States in the eastern part of the China Sea in the Malacca Strait. Malaysia recognised Indonesian sovereignty over various islands in the South China Sea, notably Pulau Tokong Boro and Pulau Pengibu, as well as Tandjung Parit and Pulau Batu Mandi in the Malacca Strait, even though these islands were not mentioned in the 1960 law[10]. Moreover, as the Court recalled in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, "the mere indication on the map of the line in question is not sufficient even for the mere purpose of defining a formal claim at the level of international relations to a maritime or continental shelf boundary"[11].

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[8] See, Affidavit of Admiral Sumardiman, Annex B, Vol. 5.

[9] See, e.g., Statement by the Honourable Tan Sri Dato Haji Abdul Kadir Bin Yusof, Attorney-General of Malaysia, to the Plenary Session of the Third United Nations Conference on the Law of the Sea at Caracas on 10 July 1974, Annex 139, Vol. 4.

[10] See, Affidavit of Admiral Sumardiman, Annex B, Vol. 5.

[11] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports, 1982*, p. 18, at p. 69.

8.13 Furthermore, Malaysia reacted in exactly the same way with regard to the islands of Ligitan and Sipadan, which:

- do not appear amongst the islands belonging to Malaysia in any official map until 1979, in particular the maps of 1966 and 1967[12],
- are not mentioned in the Malaysian Ordinance N°7 of 2 August 1969, which described a map depicting Malaysia's territorial waters (Article 5)[13],
- are not included as Malaysian possessions in the official Malaysian map of 1972 which seems to have been adopted pursuant to the provisions in the above-mentioned Ordinance[14]; indeed, Sipadan is not even shown on the map; and
- are not included within the thirty-eight marine parks in Malaysian territory, recorded in the *Business Times* in December 1994[15].

8.14 The position taken by the Malaysian technical experts on 18 September was relayed, on the same day, by the acting head of the Malaysian delegation, Dato Mohammed Saleh bin Abas, who, during the plenary session, stated that the two islands belonged to Malaysia and announced that he would produce evidence of this fact after a pause in the session. Once the session reopened, Mr. Mahyuddin, who had replaced him as the head of the Malaysian delegation, reaffirmed the position of his country, whilst at the same time stating that he was not in a position to supply the evidence - as earlier promised - but that this evidence would be put together during the weekend[16].

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[12] Map entitled *Malaysia Timor Sabah*, published and printed by the Directorate of National Mapping, Malaysia, 1966, Map No. 12 in the Map Atlas; map entitled *Semporna*, produced by the Survey Department, Malaysia, 1967, Map No. 15 in the Map Atlas. See, also, para. 6.72, above.

[13] Annex 137, Vol. 4.

[14] Map entitled *Malaysia Timor Sabah*, reprinted by the Directorate of National Mapping, N°60, 1972, Map No. 18 in the Map Atlas.

[15] Annex 177, Vol. 4.

[16] These events are discussed in the affidavits of Prof. Mochtar Kusumaatmadja and Admiral Sumardiman, Annexes A and B, Vol. 5.

8.15 The conference, which was due to end on Friday the 18th, was therefore extended until Monday 21 September. But, when the negotiations resumed, the Malaysian side was still not able to present any evidence whatsoever in support of its new claims.

8.16 It was therefore decided that the Heads of the two delegations would initial the part of the Agreement relating to the delimitation of the Malacca Strait and the South China Sea whilst, in deference to the express request of the Malaysian delegation, the negotiations concerning the delimitation between the two continental shelves in the Sulawesi Sea were to be suspended and resumed at a later stage.

8.17 No joint official record of the 1969 negotiations exists except for a Press Statement of 22 September which simply states the results achieved, specifying that "[t]he negotiation was carried out in a friendly and cordial manner" and that "[b]oth delegations were guided, in the course of the negotiation by the need to seek an equitable, fair and reasonable basis for agreement"[17]. The above commentary is based on first hand accounts of participants at the Conference, confirmed in the affidavits annexed to this Memorial[18].

## B. Content and Scope of the 1969 Agreement

8.18 The Press Statement of 22 September 1969 invokes the failure of the negotiations with regard to the delimitation of the continental shelf in the Sulawesi Sea only by inference. The following comment was, however, added:

> "Both delegations also recognised the need for their Governments to discuss related problems of territorial sea boundaries and the use of the seas between their two countries"[19].

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[17] Annex 133, Vol. 4.

[18] Affidavits of Prof. Mochtar Kusumaatmadja and Admiral Sumardiman, Annexes A and B, Vol. 3.

[19] Annex 133, Vol. 4.

8.19 In conjunction with these public declarations, the Heads of the two delegations, Professor Mochtar Kusumaatmadja for Indonesia and Mr. Enche Mahyuddin bin Haji Mohammed Zain for Malaysia, proceeded to complementary consultations which, by means of an exchange of letters on 22 September 1969, led them to state their common understanding:

> "... that both the negotiation and the Agreement are purely and wholly of a technical nature"[20].

8.20 This understanding reflects the agreement between the two Parties that the 1969 negotiations did not entail any recognition of sovereignty over the islands and the bilateral undertaking that neither Party should carry out any acts which might alter the *status quo*. This is confirmed by the annexed affidavit of Professor Mochtar Kusumaatmadja, who headed the Indonesian delegation and who was subsequently Indonesia's Minister for Foreign Affairs from 1978 to 1988[21]. As he writes:

> "As the head of the Indonesian delegation, I noted at this session that each side held different views on the legal status of Sipadan and Ligitan islands and that, either country was expected not to take any "*tindakan pemilikan*" (measures of ownership) which might be prejudicial to the other. Thus, it was agreed that the status quo will be held, pending further study on the issues by both sides..."
>
> "... The purpose of this understanding was to underscore the technical, as opposed to political, nature of the discussions that had taken place. In particular, as I have noted above, there was a desire not to prejudice political issues relating either to the legal status of Sipadan and Ligitan Islands or the position of the Philippines with respect to their claims in Sabah.
>
> It was therefore during the 1969 negotiations that the question of sovereignty over Sipadan and Ligitan was first raised between the Parties and a claim put forward on behalf of Malaysia. Both delegations ultimately decided to defer this issue so as not to impede

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[20] Annex 134, Vol. 4, see, also, Annex 135, Vol. 4.
[21] Annex A, Vol. 5.

> the signing of a continental shelf boundary agreement in other areas, and thereby agreed to maintain the status quo on the issue pending further discussion and a resolution of the matter"[22].

8.21 Even independently of this mutual undertaking - that Malaysia has not respected (see, paras. 8.58-8.80, below) - the 1969 negotiations are extremely important from a legal point of view. They mark the beginning of the dispute: until this date, Indonesia was completely unaware of any Malaysian claims to Pulau Ligitan and Pulau Sipadan. It was only during the course of these discussions that Malaysia made these claims known, for the first time, and without adducing any evidence in support of their claims, despite the promises made in this regard; this resulted in a forty-eight hour delay to the conclusion of the negotiations. Moreover, as explained above, at the beginning of these negotiations, Malaysia was acting on the basis of a map (of 1967) clearly showing that Sipadan and Ligitan belong to Indonesia, thus recognising positively Indonesia's title.

8.22 It is also of interest to note that the Parties did attach a map to their 1969 continental shelf agreement, which depicted a dashed line extending due east along the 4° 10' N latitude from the island of Sebatik[23].

8.23 For the purpose of this dispute, 1969 (and, more precisely, 18 September 1969) must therefore be considered to be the "critical date" when the dispute was definitively crystallised, "the date after which the actions of the parties cannot affect the legal situation"[24].

8.24 This concept is of particular importance in disputes of a territorial nature. As the sole arbitrator in the *Island of Palmas* case, Max Huber, noted, "it must also be shown that the territorial sovereignty ... did exist at the moment which for the decision of the dispute must be considered as critical"[25]. Sir Gerald Fitzmaurice masterfully explained the consequences of the critical date in his pleading in the case relating to *Minquiers and Ecrehos*:

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[22] *Ibid.*

[23] Map No. 17 in the Map Atlas. See, also, para. 6.75, above.

[24] Johnson, D.H.N., "Acquisitive Prescription in International Law", *27 BYBIL 1950*, fn. 4, p. 342; see, also, Basdevant, J., (ed.), *Dictionnaire de la terminologie du droit international*, Paris, Sirey, 1960, p. 186; Goldie, L.F.E., "The Critical Date", *12 ICLQ 1963*, p.1251, or Jennings, Sir R., and Watts, Sir A., *Oppenheim's International Law*, 9th ed., Longmans, London, pp. 710-711.

> "... the theory of the critical date involves ... that whatever was the position at the date determined to be the critical date, such is still the position now. Whatever were the rights of the Parties, those are still the rights of the Parties now. If one of them then had sovereignty, it has it now, or is deemed to have it. ... The whole point, the whole *raison d'être*, of the critical date rule is, in effect, that time is deemed to stop at that date. Nothing that happens afterwards can operate to change the situation that then existed. Whatever that situation was, it is deemed in law still to exist; and the rights of the Parties are governed by it"[26].

8.25 In keeping with a well established and consistent jurisprudence, this date must be fixed at the moment when one of the parties makes it known that it has a claim which is at variance with the existing state of affairs or at the moment when the parties become aware of the existence of a disagreement[27].

8.26 Whatever the previous situation, it is therefore from 1969 that the respective claims of the Parties find themselves in effect "legally neutralised". Whatever either Party may do or say after this date, these actions are not relevant to the proceedings unless the Parties agree otherwise. As the Parties have not entered into any such agreement, it is up to the Court to determine whether sovereignty over Pulau Ligitan and Pulau Sipadan belongs to the Republic of Indonesia or to Malaysia on the basis of the territorial title to the islands in existence as of 1969.

8.27 However, while acknowledging its undeniable relevance, it is Indonesia's opinion that the importance of this date should not be exaggerated. If 1969 is considered to be the date when the dispute emerged, given that this is the first time that Malaysia made known its claims over the islands, the only result is to exclude from evidence all self-serving acts after this date in connection with the disputed islands (subject to the reservations made at paras. 8.46-8.57, below). This date, however, does not by itself serve to determine conclusively the existence of a sovereign title in favour of either Party. The existence of this title must be analysed at the time when each country attained independance (as per the principle of *uti possidetis juris*) - another key-date in all territorial disputes between States which have had a colonial past - in order to establish what the prevailing situation was at that time.

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[25] P.C.A. Award of 4 April 1928, *UNRIAA*, Vol. II, p. 830, at p. 839.

[26] *I.C.J. Pleadings, Minquiers and Ecrehos*, Vol. II, p. 64.

[27] See, *Sovereignty over Certain Frontier Land, Judgment, I.C.J. Reports 1959*, p. 209, at pp. 227-228 or *Right of Passage over Indian Territory, Merits, Judgment, I.C.J. Reports 1960*, p. 6, at pp. 28-29.

8.28 In other parts of its Memorial, the Republic of Indonesia has reviewed the importance of these different dates to the case and the way in which they interact.

## Section 2. The Subsequent Conduct of the Parties

8.29 The critical date has the effect of freezing the territorial titles of the Parties. Neither Indonesia, nor Malaysia can invoke later activities on the disputed islands as evidence or as acts of consolidation of title. Indeed, these activities would not be of a title-generating nature.

8.30 This is all the more relevant in the present instance given that the Parties agreed, in 1969, to maintain the *status quo* as seen above.

8.31 This does not imply that the subsequent activities of the Parties relating to Ligitan and Sipadan lack all legal significance. They may be legally significant in two situations:

- on the one hand, if they constitute the recognition by one of the Parties of the territorial sovereignty of the other; or

- on the other hand, if they can be described as an agreement to transfer the territorial title in existence at the time of the critical date.

8.32 In the present case, not only has no such an agreement been entered into, but, what is more, Indonesia has clearly taken steps to protect its rights by systematically protesting against the breaches of the *status quo* and the activities of Malaysia on the disputed islands[28]. These activities have become particularly intensive since the beginning of the 1990s; they are in direct contrast with the initial attitude taken by Malaysia which, in the years following the 1969 negotiations, reconfirmed by its conduct its recognition of Indonesian sovereignty over Ligitan and Sipadan.

## A. Malaysia's Recognition of Indonesian Title after 1969

8.33 As Indonesia has demonstrated in Chapter VI, the United Kingdom and subsequently Malaysia have, on many occasions, recognised Indonesia's sovereignty over the disputed islands, essentially through maps issued by official cartographic services and by the oil concessions granted to oil companies prior to 1969, which have consistently respected the 1891 line. It is also significant that these acts of recognition continued after 1969, even though, by this date, Malaysia had advanced for the first time its claims of territorial sovereignty over Ligitan and Sipadan.

### (i) The Limits of the Oil Concessions

8.34 In paras. 6.10-6.29, above, Indonesia has set out the legal significance of the limits of the oil concessions in determining the maritime boundary between the two States. By refraining from granting concessions which extended south of the 4° 10' N parallel line, Malaysia demonstrated in a concrete fashion its belief that it did not possess territorial rights beyond that limit. Moreover, the coincidence between the limits of the Indonesian oil concessions on one side and the Malaysian concessions on the other was clearly not fortuitous; the Parties' conduct in this respect attests to the commonly shared conviction of the two Parties regarding their respect for the 1891 line. It demonstrates that Malaysia, just as Indonesia, was convinced, before its claims were advanced during the 1969 negotiations concerning the continental shelf, that its maritime and insular territory did not extend beyond the 4° 10' N line of latitude.

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[28] See, para. 8.58, below.

8.35 This situation continued after Malaysia's territorial claim was advanced for the first time during the 1969 negotiations. Apparently, Malaysia has not granted new concessions after the partial failure of the 1969 negotiations on the delimitation of the continental shelf. However, it maintained the 1968 Teiseki concession which respected the 1891 line.

### (ii) The 1972 Malaysian Map

8.36 The cartographic material available constitutes another decisive piece of evidence in support of this conclusion.

8.37 Although in 1969 Malaysia had laid claim to Pulau Ligitan and Pulau Sipadan (see, Section 1, above), the map published by the Directorate of National Mapping of Malaysia in 1972 reproduces purely and simply the course of the line shown on previous maps (see, Chapter VI, above) and does not include Ligitan and Sipadan within Malaysia's maritime boundaries[29]. Indeed, Sipadan is not even shown on the map.

8.38 This fact is all the more significant given that, at the time of the 1969 negotiations, the civil servants of the National Mapping Directorate played an active part in the negotiations. All three Malaysian experts worked in this office:

- Hadji Mohamad Yatim, Director of National Mapping of Malaysia,
- Mr. Kok Swee Kok, Assistant Director, and
- Mr. Tamak bin Hamzah, Chief Cartographer[30].

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[29] Map No. 18 in the Map Atlas.

[30] Annex 132, Vol. 4. See, also, Affidavit of Admiral Sumardiman, Annex B, Vol. 5.

It was precisely during the discussions between the cartographic experts of the two Parties that Malaysia, for the first time, contested Indonesia's territorial sovereignty over Ligitan and Sipadan[31].

8.39 It is therefore unthinkable that these high ranking officials, who were responsible for the elaboration or, in any event, the publication of the 1972 map, and who had played a fundamental role in the presentation of the Malaysian claims in 1969, could have inadvertently allowed a map to be printed, three years later, which was incompatible with these claims. The publication of this map constitutes clear recognition of the absence of Malaysian sovereignty over the two disputed islands.

8.40 It must also be noted that the 1972 map was in keeping with the map attached to the 1969 Agreement, which also depicts a straight dashed line extending east of Sebatik, in conformity with the 1891 Convention.

### (iii) Maintenance of Buoys on Both Sides of the 4°10' North Line

8.41 Another notable aspect of Malaysia's behaviour is related to the maintenance of safety buoys in the region.

8.42 A navigational buoy on the Alert Reefs, which are also referred to on some maps as the Alert Patches and which, as can be seen from the enlargement of the hydrographic chart attached as Map No. 23 in the Map Atlas, is situated just south of the 4° 10' N parallel, was erected by the Indonesian ships KRI *Jalanidhi* and KN *Bima Sakti* in 1994[32]. It seems that the same year Malaysia began to undertake activities on Roach Reefs located just to the north of the 4° 10' N line. The Alert Reefs are situated at approximately 4°09'30" N, 118°16'00" E while Roach Reef lays at 4°11'30" N; 118°16'00" E.

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[31] Annex 132, Vol. 4, at para. II 5 *e*, and Affidavit of Admiral Sumardiman, Annex B, Vol. 5.

[32] See, *Description of Alert Reef* prepared by the Head of Hydro-Oceanography Services, Annex 181, Vol. 4.

8.43 The electrical battery on Alert Reef is maintained by the Navigation District Class of Tarakan as shown by the annexed Reports[33]. For its part, the electrical battery buoy on Roach Reef is maintained by the Malaysian Navy.

8.44 The interesting point here is that both Parties strictly respected the 4°10' line in carrying out these activities: while Indonesia is in charge of the buoy at Alert Reef lying south of the line, Malaysia undertakes activities in Roach Reef, lying north of the line. It must be noted that Malaysia has no more protested against Indonesian's actions in the area it claims, than Indonesia has protested against Malaysia's behaviour, which it recognises as taking place in Malaysian waters.

8.45 Moreover, for the purpose of checking the shallowness and of updating data on waters around Alert Reef, an Indonesian Navy Ship, KRI *Jalanidhi*, surveyed and mapped Alert Reef from February 10 to March 12, 1994, in accordance with the Armed Forces Survey and Mapping Program of 1993/94 and based on Operational Plan N° 26-93 on Archipelagic Sealanes II. During the Survey, three Malaysian ships, namely 3144-KD *Sri Sabah*, 46-KD *Rentaka* and 161-KD *Marikh* were seen surrounding the area and watching the survey activities. The Malaysian fleet did not try to prevent the survey and mapping activities and, as First Admiral Nicolas P. Ello, the Head of the Hydro-Oceanography Services of the Indonesian Navy concluded in his report on this survey:

> "It could be assumed that Malaysia respects the 04°10'00 line"[34].

## B. The Legal Significance of Malaysia's Recognition

8.46 Whilst the parties cannot, unilaterally, modify the legal situation in existence at the time the dispute arose, later events may have confirmatory value in corroborating the evidence that exists relating to the earlier territorial title. As Sir Gerald Fitzmaurice has observed:

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[33] *Reports of Electrical Battery Buoy Maintenance*, produced by the Department of Transportation, Tarakan, Annex 179, Vol. 4.

[34] *Description of Alert Reef* prepared by the Head of Hydro-Oceanography Services, Annex 181, Vol. 4.

> "Just as the subsequent practice of parties to a treaty, in relation to it, cannot alter the meaning of the treaty, but may yet be evidence of what that meaning is, or of what the parties had in mind in concluding it, so equally events occurring after the critical date in a dispute about territory cannot operate to *alter* the position as it stood at that date, but may nevertheless be evidence of, and throw light on, what that position was"[35].

8.47 As Sir Gerald has also explained, the actions, post-critical date, of the parties cannot:

> "be admitted to consideration in such a way as to affect or change the legal position as it stood at the critical date – for, if that were the case, it would nullify the critical date, and cause it to be advanced to the date of the latest act of the parties so admitted; and what would ensue would be a determination of the legal position as to sovereignty at that later date. The true position is that if the post-critical date acts are of 'non improvement' character, they will be evidence tending to show the existence of sovereignty at that date: and if not, not"[36].

8.48 Case law has consistently applied these principles. In the *Island of Palmas* case, Judge Max Huber, having determined the critical date after which the facts adduced by the parties could no longer be used to establish territorial title, added that these events:

> "are however indirectly of a certain interest, owing to the light they might throw on the period immediately preceding"[37]

8.49 In the *Taba* case, the Arbitral Tribunal also commented that:

> "events subsequent to the critical period [that of the British Mandate over Palestine] can ... be relevant, not in terms of a change of the situation, but only to the extent that they may reveal or illustrate the understanding of the situation as it was during the critical period"[38].

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[35] Sir Gerald Fitzmaurice's pleadings in the *Minquiers and Ecrehos* case, *I.C.J Pleadings, Minquiers and Ecrehos*, Vol. II, p. 94; italics in original text; see, also, the separate opinion of Judge Sir Gerald Fitzmaurice in *Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 6, at p. 61.

[36] Fitzmaurice, Sir G., "The Law and Procedure of the International Court of Justice, 1951-1954", *BYBIL 1955-56*, p. 44.

[37] PCA Award of 4 April 1928, *UNRIAA*, Vol. II, p. 866.

[38] Arbitral Award, 29 September 1988, 27 *ILM* 1988, p. 1469, para. 175; see, also, the *Beagle Channel Arbitration*, Award of 18 February 1977, *UNRIAA*, XXI, p. 53, at Section IV, pp. 66 *et seq.*, paras. 112 *et seq.*

8.50 The Court has also adhered to this view, when, at various times, it has found that actions occurring after the critical date serve to confirm the situation in existence at that date[39].

8.51 The oil concessions maintained by Malaysia after the partial failure of the 1969 negotiations on the delimitation of the continental shelf and the publication of the 1972 map by the Directorate of National Mapping of Malaysia are included in this category of actions as well as the respect of the 4° 10' N line by both Parties in relation to the maintenance of buoys. Although they do not modify the situation existing in 1969, they do confirm the situation in all its respects and remove any doubts there might have been about Malaysia's view that as of the critical date, Malaysia had no territorial sovereignty over the islands of Ligitan and Sipadan.

8.52 Two elements further reinforce the probative value of these actions.

8.53 First of all, these actions occurred "in the period immediately after" the critical date. That is to say very "shortly after" the dispute began, at a time when one would expect Malaysia to be particularly careful about establishing and defending its territorial claims. "Claims then made, and the reaction - or lack of reaction - to them may throw light on the contemporary appreciation of what was the situation" at the critical date[40].

8.54 Second, the evidentiary value of the actions analysed above is increased by the fact that they constitute a recognition of facts which are unfavourable to the Party responsible for them - in other words, as admissions against interest. As the Court has stated:

> "Interpretations placed upon legal instruments by the parties to them, though not conclusive as to their meaning, have considerable

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[39] See, Judgment of 15 June 1962, *Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 6 at pp. 16 and 35 or Judgment of 11 September 1992, *Land, Island and Maritime Frontier Dispute, (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, p. 351, at pp. 524 or 559; see, also, Judge Basdevant's individual opinion in *Minquiers and Ecrehos, Judgment, I.C.J. Reports 1953*, p. 47, at pp. 82-83.

[40] See, Judgment of 11 September 1992, *Land, Island and Maritime Frontier Dispute, (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, p. 351 at pp. 429-430 and 559.

> probative value when they contain recognition by a party of its own obligations under an instrument"[41].

**8.55** The same is true when dealing with actions which are unfavourable to their author in the context of a territorial question. Thus it was, *a contrario*, in the *Walvis Bay* case, where the arbitrator J.F. Prida noted, in relation to actions carried out after the critical date, that:

> "...the value of [evidence]... in favour of the High Party which invokes it, should be weighed more carefully than is necessary when it is unfavourable to that Party"[42].

**8.56** This is especially true with regard to the map evidence:

> "Clearly, a map emanating from Party X showing certain territory as belonging to Party Y is of far greater evidential value in support of Y's claim to that territory than a map emanating fro[illegible] itself showing the same thing"[43].

In the present case, it is indeed Party X, Malaysia, which recognises, by the actions described above, in particular the 1972 map originating from its official mapping service, that it does not have any title over Ligitan and Sipadan, although it protested Party Y's - in this case Indonesia's - sovereignty over the same.

**8.57** The only conclusion to be reached from this factual and legal analysis is that, immediately after the critical date, the date when the present dispute began because of Malaysia's new claims over Ligitan and Sipadan, Malaysia has, by means of actions of a totally unambiguous nature, recognised that it did not have territorial sovereignty over the disputed islands. This legal admission, which confirms Indonesian title originating from the Anglo-Dutch Convention of 1891, is of great probative value even though the actions occurred after the critical date and were unfavourable to the Party carrying them out.

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[41] Advisory Opinion, 11 July 1950, *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128, at pp. 135-136.

[42] *Walvis Bay case*. Arbitral Award of 23 May 1911, *UNRIAA*, Vol. XI, p. 302.

## C. Indonesia's Reactions vis-à-vis Malaysia's Actions

8.58 As Indonesia has shown in the previous paragraphs, in the years immediately following the 1969 negotiations, Malaysia not only respected the *status quo*, but indeed went a step further and carried out actions by which it recognised the lack of substance to its claims. Matters started to change in 1979, however, when the Directorate of National Mapping of Malaysia published a map reflecting Malaysia's claims over Ligitan and Sipadan. After this date, Malaysia carried out a series of actions clearly aimed at improving its legal position with respect to the two islands. These actions lack all legal effect, especially given that Indonesia, - which itself has been careful to respect the 1969 agreement - has refrained from undertaking similar actions which could modify the *status quo* whilst actively and consistently protesting against Malaysia's activities.

### (i) The 1979 Malaysian Map

8.59 It was only in 1979 that the Directorate of National Mapping of Malaysia published, for the first time, a map which included Ligitan and Sipadan within the Malaysian maritime zone.

8.60 A mere glance at this map, which appears as No. 21 in the Map Atlas, shows the striking contrast with previous maps originating from the same source. It is thus clear to what extent Malaysia's claims are artificial and represent an encroachment upon the 1891 line.

8.61 Apart from this, the 1979 map has no legal relevance for the resolution of the current dispute and is not admissible evidence for determining which Party has sovereignty over Pulau Ligitan and Pulau Sipadan. Prepared for the purpose of assisting Malaysia in this dispute, this map is notably in contrast with almost all the previous cartographic material, including maps produced by Malaysia itself, described in Chapter VI of this Memorial.

**8.62** As has been seen, prior to 1979, Malaysian maps were consistent with maps originating from third States and independent cartographic institutions in depicting the 1891 line separating the territorial possessions of the Parties extending east of the island of Sebatik.

**8.63** With respect to the lack of legal relevance of such a radical and self-serving change of cartography, the Arbitral Tribunal in the *Beagle Channel* case, in examining "[t]he cartography of the case considered as corroborative"[44], discarded the Argentine maps produced after the critical date (fixed at the time of the 1908 Treaty, when "the existence of a latent controversy ... had become evident"[45]), which depicted the Picton islands, Nueva and Lennox (the "PLN group") as belonging to Argentina, unlike earlier maps. Notable exceptions were those maps issued immediately after the critical date, and which were consistent with the usual cartography[46]. In this regard, the Arbitral Tribunal noted that:

> "... the quasi-uniformity of Argentinian cartography in the immediate post-Treaty period, and its concordance with Chilean official cartography in the sense that the PLN group was Chilean, continued on the basis, not of a complete, but of a 'substantial' concordance of official Argentine maps up to 1908, apart from certain 'doubtful exceptions'"[47].

**8.64** The exact same question arises in the present case and must be decided in the same way. Just as Argentina, Malaysia's official cartographic authorities published at least two maps immediately after the critical date which recognised that Malaysia has no title over the disputed islands. These maps were thereby consistent with the "substantial" (in reality quasi-totality) majority of earlier maps[48]. As did Argentina, Malaysia thereafter modified its official cartography in order to make sure it complied with its new claims. In both cases, this complete change in policy lacks all legal significance.

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[44] *Beagle Channel Arbitration*, Award of 18 February 1977, *UNRIAA*, XXI, p. 53, at p. 163.

[45] *Ibid.*, para. 151, p. 90.

[46] See, paras. 8.48 and 8.55, above.

[47] *Ibid.*, para. 151, p. 90.

[48] See, Map Atlas, Maps No. 18 and 20.

8.65 This is as a consequence of a more general and well established principle, sometimes known as the "improvement of position principle" or the "test of non-improvement of legal position", according to which actions of the parties after the critical date, and carried out with the sole aim of improving or supporting their position, lack legal relevance[49].

8.66 This test being recognised, the Arbitral Tribunal in the *Beagle Channel* case decided to discard the maps that Argentina had apparently published only in order to improve its legal position, just as Malaysia has done in the current situation.

8.67 The International Court of Justice has applied this general principle various times, notably in the *Minquiers and Ecrehos* case, where the Court accepted, subject to certain conditions (for a discussion of these conditions, see, paras. 8.46-8.56, above), the probative value of actions that occurred after the critical date, "in view of the special circumstances of the case":

> "...unless the measure in question was taken with a view to improving the legal position of the Party concerned"[50]

8.68 Similarly, in the case concerning the *Land, Island and Maritime Frontier Dispute*, the Court admitted one piece of evidence introduced by El Salvador, which post-dated the critical date, because, as the Court noted:

> "...it has not been suggested that [this] title was issued in order to strengthen the territorial claim of the Republic of El Salvador"[51]

One can infer from this, *a contrario*, that the title in question would not have been accepted if this condition, which could be described as a "condition of innocence", had not been fulfilled.

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[49] Fitzmaurice, Sir G., "The Law and Procedure of the International Court of Justice, 1951-1954", *BYBIL* 1955-56, pp. 40-41.

[50] *Minquiers and Ecrehos, Judgment, I.C.J. Reports 1953*, p. 47, at p. 59.

[51] *Land, Island and Maritime Frontier Dispute, (El Salvador/Honduras: Nicaragua Intervening), Judgment, I.C.J. Reports 1992*, p. 351, at p. 430.

**8.69 This condition is not fulfilled in the current case. The 1979 map was deliberately published by the same official Malaysian institution whose personnel included the mapping experts who brought up the question of sovereignty over the islands in 1969 and who did not hesitate to publish again, three years later, a map which was more consistent with the legal situation in fact. Moreover, the publication of the 1979 map set in motion a number of actions which in fact provoked the rupture of the *status quo* in favour of Malaysia in contravention of the undertakings made by it in 1969. It must be underlined that Indonesia immediately protested against this map by a *note verbale* on 8 February 1980[52].**

### (ii) Malaysia's Illegal Occupation of Ligitan and Sipadan since 1980

**8.70 At the end of the 1980s, Indonesia became aware of Malaysia's actions in breach of the obligations undertaken in 1969.**

**8.71 Therefore, by means of a *note verbale* dated 7 May 1988, the Indonesian Ministry for Foreign Affairs, referring to the 1969 "understanding concerning the islands of Sipadan and Ligitan, off the Eastern Coast of Kalimantan", denounced the intensive settlement activities being carried out by Malaysia, *inter alia*:**

> **"1. a wooden berth of 16 meter in length and 3 meter in width, and connecting bridge of 36 meter in length and 2 meter in width have been built in the northernmost section of the island;**
>
> **"2. approximately 110 coconut trees have been planted in the area under the management of Haji Hamid, resident Simpurna, East Malaysia;**
>
> **"3. a house owned by Haji Hamid is used as a shelter for Malaysian fishermen who fish along Sipadan's seashore;**
>
> **"4. marine tourist activities to the island have been organized by Borneo Divers Co., a travel bureau from Simpurna, East Malaysia. A ship owned by that company flying Malaysian flag was spotted on 18 February 1988 carrying 17 foreign tourists of British, New Zealand and U.S. nationalities"[53].**

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[52] Annex 140, Vol. 4.

[53] Annex 142, Vol. 4.

8.72 Despite this protest, Malaysia continued to expand its installations on Sipadan in order to maximise its unilateral exploitation of tourism on the island. By means of a new *note verbale* on 15 April 1992, Indonesia's Ministry for Foreign Affairs therefore protested again with regard to the construction of 40 cabins, 8 cafeterias, 3 houses, a pier and sports and recreation facilities, all under an impressive police protection force of 20 armed men, equipped with four speed boats[54]. Far from contesting these facts, Malaysia stubbornly insisted that they are consistent with its claim of "sovereignty and jurisdiction over Pulau Sipadan and Pulau Ligitan"[55].

8.73 On the basis of this erroneous premise, Malaysia has continued to build up its tourism installations on Sipadan (see, the Indonesian note of protest dated 2 April 1993, which "notes with grave concern the continued unilateral acts and activities of Malaysia, such as the occupation, the promotion of tourism in Pulau Sipadan" and the recognition of these activities by Malaysia's note of 12 May 1993)[56].

8.74 These unilateral actions carried out since the end of the 1980s clearly had as their object that of presenting the Indonesian authorities with a *fait accompli* which is totally incompatible with the spirit of the 1969 *status quo* agreement. And, indeed, the occupation of Sipadan and the construction of tourist installations, denounced by Indonesia, have led to the creation of a centre for deep sea diving which is famous worldwide and which is being intensively exploited by Malaysian tour operators. Proof of this can be seen by the official Malaysian publication, at the end of 1993, of a brochure entitled, *Malaysia: Fascinating Adventures* and a booklet entitled, *Visit Malaysia Year '94 – The Traveller's Guide to Malaysia's Fascinating Treasures*, with an introductory statement by the Malaysian Minister of Culture, Arts and Tourism, widely and officially distributed by the Government of Malaysia, in which Sipadan is described as one of the scuba diving resorts in Malaysia[57].

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[54] Annex 147, Vol. 4.

[55] *Note Verbale* of 19 May 1992, Annex 149, Vol. 4.

[56] Annexes 158 and 161, Vol. 4.

[57] Annexes 152 and 178, Vol. 4.

Indonesia has actively protested against this *fait accompli* (and these publications), namely through a diplomatic note on 23 November 1993 in which Indonesia contested the unilateral actions taken by Malaysia, stating that they were contrary to the 1969 *status quo* agreement[58]. In 1997, Malaysia published publicity spots for the islands on the internet[59]. Most notably, it is stated that "the island is in the care of Wildlife Department under the Ministry of Tourism and Environmental Development".

8.75 By a note of 6 September 1994, Indonesia's Ministry for Foreign Affairs drew the attention of the Malaysian Embassy in Jakarta to "Malaysia's escalation of illegal activities in Pulau Sipadan and Ligitan as well as in the surrounding sea in the form of deployment of armed forces on Pulau Sipadan, the continuation of tourist promotions on Pulau Sipadan as well as the series of intrusions by Malaysian Government vessels and aircrafts in the Indonesian territory South of the parallel 4°10' North latitude..."[60]. Similar illegal activities took place at Ligitan where Malaysia encouraged Malaysian fishermen to build small huts on the island at the beginning of 1995 or, in any event, let them do so unimpeded[61].

8.76 This recent occupation of Sipadan and Ligitan islands is not the only manifestation of Malaysia's policy to present Indonesia with a *fait accompli*. At the same time as Malaysia tried - successfully, in view of the responsible policy of restraint and moderation that Indonesia had kept to in accordance with the 1969 *status quo* agreement, later reconfirmed at the highest level by the respective Heads of State of each Party (see, Section C, below) - to get a foothold on the two islands, Malaysia has carried out an active policy, arguably an "activist" policy of establishing a military presence, both by maritime and aerial means, in the vicinity of the Indonesian islands of Ligitan and Sipadan.

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[58] Annex 170, Vol. 4.

[59] Borneo Divers' Web site, Annex 183, Vol. 4.

[60] Annex 176, Vol. 4.

[61] See, Indonesian *note verbale*, 236/PO/IV/95/29, dated 17 April 1995, Annex 180, Vol. 4.

8.77 This activism is attested to by Indonesia's numerous *notes verbales* concerning incidents which have occurred in the adjacent waters of the two islands regarding illegal Malaysian patrols in these waters or illegal flights over the islands. By way of examples:

- a confidential report from the Directorate of Security of the Indonesian Navy Headquarters enumerates the incidents during the year 1991[62];

- the *note verbale* of 19 December 1992 lists the main incidents that occurred between 20 November 1992 and 11 March 1992[63];

- the note of 5 May 1993 concerns the intrusions of Malaysian vessels into Indonesian waters during the first few months of 1993[64];

- the note of 17 June 1993 brings to the attention of the Malaysian Embassy in Jakarta the naval and aerial incidents which have occurred in March and April of the same year[65];

- the note of 25 January 1994 lists Malaysian intrusions at the end of 1993[66];

- another long list, numbering at least 61 incidents, of Malaysian naval intrusions into Indonesian territory between January and June 1994 is annexed to another Indonesian *note verbale* of 6 September 1994[67].

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[62] Note R/49/LK/II/1992/DITPAM, Annex 182, Vol. 4. See, also, Report by Chief of Staff of Navy Forces concerning *Development of the border matters of the Sipadan and Ligitan Islands and Navy ships named KAL Mahakam*, No. R/745/XI/1990 of 19 November 1990 concerning an incident which occurred on 21 July 1990, Annex 143, Vol. 4.

[63] Annex 155, Vol. 4.

[64] Annex 160, Vol. 4.

[65] Annex 164, Vol. 4.

[66] Annex 173, Vol. 4.

[67] Annex 176, Vol. 4.

8.78 It would be understandable, if Malaysia's claim had been made in good faith, that Malaysia did not want to remain entirely absent from the claimed area. However, this military presence, both naval and aerial, is very much in excess of what would be reasonable to use in a symbolic capacity and contrasts markedly with the lack of any Malaysian military presence, be it naval or aerial, in the region before the critical date. These actions can only be explained by Malaysia's recent decision to justify *a posteriori* the territorial claims which it had expressed for the first time in 1969. These actions therefore both run counter to the "non-improvement of legal position principle"[68] and, quite simply, to the critical date principle itself, which excludes the taking into consideration of all actions occurring after the date when the dispute crystallised[69].

8.79 Indonesia has commented on this *fait accompli* policy, used by Malaysia on the two disputed islands, for two reasons. In the first place, it is clear evidence of Malaysia's deliberate policy to occupy Ligitan and Sipadan and, at the same time, it shows *a contrario* that this policy was not in place before the end of the 1980s. Second, the Malaysian strategy has put Indonesia on the defensive in the sense that, apart from reacting with force and thereby creating serious tensions in the region, Indonesia could only protest verbally against the violations of the *status quo* agreement, without having the means to re-establish it.

### (iii) Indonesia's Protests and Their Legal Significance

8.80 Even though the actions of Malaysia on the two islands and in the adjacent waters or in the air space above the islands post-1969 could not modify the situation to the advantage of Malaysia, Indonesia's protests are not without legal effect. They confirm the consistency of the Indonesian position and preclude Malaysia from seeking to establish title by acquisitive prescription at some future date.

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[68] See, paras. 8.65-8.67, above.

[69] See, paras. 8.21-8.22, above.

8.81 In the *Fisheries* case, the Court considered that the straight base-lines system upheld by Norway, could be enforced against the United Kingdom since the latter had "refrained from formulating reservations"[70]. In the same case, Judge Read noted that there existed:

> "...cases where coastal States have made extensive claims, but have not maintained their claims by the actual assertion of sovereignty over trespassing foreign ships. Such claims may be important as starting points, which, if not challenged, may ripen into historic title in the course of time.
>
> "The only convincing evidence of State practice is to be found in seizures, where the coastal State asserts its sovereignty over the waters in question by arresting a foreign ship and by maintaining its position in the course of diplomatic negotiation and international arbitration.
>
> "Here, it is necessary to rule out seizures made in Norway at and since the commencement of the dispute. They met with immediate protest by the United Kingdom, and must, therefore, be disregarded"[71].

8.82 *Mutatis mutandis*, the facts of the present case are comparable with the reservation that the seizure of Malaysian vessels in the waters adjacent to Ligitan and Sipadan islands would have increased excessively the tension in the area and would not have been in keeping with the spirit of the 1969 *status quo* agreement and the undertaking by the two Parties to resolve their differences peacefully. On the other hand, it was normal, and legally necessary, for Indonesia to:

(i) protest against Malaysia's incursions into these waters; and

(ii) maintain a presence at an equivalent degree to that in existence before Malaysia's claims surfaced, even to reinforce its political response to Malaysia's *fait accompli* policy. This is what Indonesia has done.

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[70] *Fisheries, Judgment, I.C.J. Reports 1951*, p. 116, at p. 139; see, also: *Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 6, at pp. 30-31 and 32-33 and, *a contrario*, P.C.I.J., *Legal Status of Eastern Greenland*, Series A/B, No. 53, p. 22, at pp. 62-63.

[71] Dissenting Opinion of Judge Read, *Fisheries case, Judgment, I.C.J. Reports 1951*, p. 116, at p. 191.

**8.83 As soon as the Indonesian authorities learned about the publication of the 1979 map by the Directorate of National Mapping of Malaysia, Indonesia's Ministry for Foreign Affairs addressed a *note verbale* on 8 February 1980 to the Malaysian Embassy in Jakarta, in protest against this unilateral action, stating that it was:**

> **"...clearly contrary to the understanding reached during the negotiations between Indonesia and Malaysia on the delimitation of the continental shelf boundaries between the two countries, held at Kuala Lumpur in 1969. It was then clearly understood by the Malaysian Delegation and the Indonesian Delegation that, since no agreement could yet be reached on the question of ownership or title of the islands of Sipadan and Ligitan, the two delegations agreed to temporarily set aside the problem of delimitation in the area. This implied that it was expected that no continental shelf boundary in the area would be drawn before an acceptable solution on the legal status of the two islands could be reached by the two countries";**

**Emphasising that Malaysia's position was contrary to the principles of the new law of the sea, the note concluded as follows:**

> **"The Indonesian Government therefore rejects the legality of Malaysia's claim of sovereignty and jurisdiction as shown on the maps referred to above, including the claim of sovereignty over the Indonesian islands of Sipadan and Ligitan. Such claim, as far as Indonesia is concerned, has no legal effect whatsoever. The Indonesian Government, therefore, does not accept the maritime boundary lines as claimed by Malaysia as the basis for future negotiations between Indonesia and Malaysia"[72].**

**8.84 Malaysia rejected "the claim of the Indonesian Government that the islands of Sipadan and Ligitan belong to Indonesia" in its *note verbale* of 27 March 1980[73]. The result was in effect a kind of "return to the legal *status quo*" as it was in 1969: the two States taking note of their disagreement once again, while the *fait accompli* policy that Malaysia wished to set up had not produced any legal effect whatsoever.**

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**[72] Annex 140, Vol. 4.**

**[73] Annex 141, Vol. 4.**

8.85 Subsequently, on numerous occasions, Indonesia had to protest against Malaysian activities in the area, activities that were surreptitious at first, then increasingly open. First, Indonesia protested against Malaysia's illegal occupation of the two islands and the intensive tourism exploitation of Sipadan[74].

8.86 Malaysia, probably anxious to create evidence to support its claims, rejected Indonesia's protests by means of various *notes verbales*, on the following dates: 19 May 1992[75], 11 August 1992[76], 4 December 1992 (No. AT 176/92)[77], 7 January 1993[78], 12 May 1993 (No. AT 31/93)[79], 23 June 1993 (No. AT 40/93) [80], 28 July 1993[81], 3 January 1994 (No. AT 2/94)[82], 22 February 1994[83].

8.87 At the same time, Malaysia began to denounce, by means of *notes verbales*, what it considered to be Indonesian intrusions into the maritime zone around Ligitan and Sipadan claimed by Malaysia[84].

8.88 These *notes verbales*, which are not worth analysing in any detail here, demonstrate a number of points.

8.89 First, Malaysia, after having recognised the lack of foundation of its claims in the years following the critical date[85], sought to undo this recognition and to preserve its alleged "rights" by protesting against Indonesia's presence in the disputed area. These belated manifestations lack all legal significance:

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[74] See, paras. 8.70-8.78, above.

[75] Annex 149, Vol. 4.

[76] Annex 150, Vol. 4.

[77] Annex 154, Vol. 4.

[78] Annex 156, Vol. 4.

[79] Annex 161, Vol. 4.

[80] Annex 165, Vol. 4.

[81] Annex 167, Vol. 4.

[82] Annex 172, Vol. 4.

[83] Annex 174, Vol. 4.

[84] See, namely, Malaysian *notes verbales*: AT 29/92 dated 24 March 1992; AT 42/92 dated 21 April 1992; 139/92 dated 21 September 1992; AT 175/92 dated 4 December 1992; AT 20/93 dated 12 March 1993; AT 23/93 dated 8 April 1993; AT 32/93 dated 12 May 1993 (erroneously dated 12 March 1993); AT 41/93 dated 23 June 1993; AT 81/93 dated 23 August 1993; AT 1/94 dated 3 January 1994, Annexes 146, 148, 151, 153, 157, 159, 162, 166, 168 and 171, Vol. 4.

[85] See, paras. 8.33-8.39, above.

- they run counter to the very principle of the critical date;
- having occurred many years after this date, they lack the probative value of actions undertaken immediately after the dispute has crystallised, which shed light on the true intentions of the Parties at the time of the critical date[86]; and
- unlike the actions analysed above, they were custom-made for the situation and therefore fall foul of the principle according to which actions aimed at improving the position of the party from which such actions originate, are null and void[87].

8.90 Second, Malaysia's *notes verbales* are evidence of the constant and continuing presence of Indonesia's navy and airforce in the region. Indonesia does not by this seek to gain any real advantage, given that Indonesia is aware that these numerous and constant actions also occurred after the 1969 critical date when Malaysia's claims first surfaced. This presence does however show that Indonesia, which had consistently protested against Malaysia's illegal occupation of Sipadan and, to a lesser extent, Ligitan, never acquiesced, even implicitly, to Malaysia's activism.

8.91 At most, Indonesia's actions confirm the earlier situation: unlike Malaysia's activities, Indonesia's activities do not contradict the previously established title, they support it. This is so for the routine patrols conducted around the islands waters by the Indonesian East Naval fleets and Naval aircrafts and for the visits paid from time to time by Indonesian civil or military authorities as has been the case in:

- 1970 – visit to Sipadan by Major (Navy) Basuki from the Headquarters of the Indonesian Navy, escorted by Sailor 1st Class Ilyas; on this occasion, they met two people coming from the Bugis tribe and the Timor Flores, who were there just in transit[88];

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[86] See, paras. 8.47-8.51, above.

[87] See, paras. 8.54-8.56 and 8.65-8.68, above.

- 1987 and 1988 – patrols conducted to Sipadan and Ligitan islands by 1st Sergeant Mdl Harlin Harahap (retired)[89];
- 1989 – air patrol using a Nomad Aircraft with the destination of Sipadan and Ligitan islands, conducted by the Operational Commandant of Tarakan Naval Base, Lieutenant Colonel (Navy) Alyas Muhammad[90];
- December 1990 – increase in patrol activities and of peaceful presence of Indonesian naval vessels in Sipadan waters decided by the Commander of Military Area VI[91].
- 1992 – visit of a group of approximately 120 people to Sipadan[92];
- June 1992 – air patrol conducted by the Operational Commandant of Tarakan, Lieutenant (Navy) M. Soegiarto[93];
- 1995 – survey conducted in Sipadan by the Observation Marine Post of the Pancang River, with Sergeant-Major (Marines) Gito (retired) in charge[94];
- November 1995 – the Secretary-General of the National Board of Defence and Security visited the border around Sipadan and Ligitan in a helicopter belonging to Pertamina[95]; etc.

8.92 Similarly, Indonesian fishermen have continued their fishing activities mainly around Ligitan where they used to stay temporarily from time to time[96].

8.93 Contrary to Malaysia, Indonesia has always been careful to preserve the *status quo* as witnessed, e.g., by an official note dated 17 January 1992 from the Assistant for Operation to the General Chief of Staff regarding contact between the Indonesian and the Malaysian navies in the vicinity of Sipadan and Ligitan islands. It states:

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[88] See, the Military Survey Report prepared by the Indonesian Navy regarding visits in 1970 to Sipadan and Ligitan, dated 29 July 1970, Annex 138, Vol. 4 and Affidavit of Sailor 1st Class Ilyas, Annex D, Vol. 5.

[89] Affidavit of Sgt.-Major Weku, Annex H, Vol. 5.

[90] *Ibid.*

[91] Telegraphic Message from Chief of Armed Forces to Commander of East Fleet, dated 3 December 1990, Annex 144, Vol. 4.

[92] Affidavit of Marine Chief Corporal Sabichoen, Annex E, Vol. 5.

[93] Affidavit of Sgt.-Major Weku, Annex H, Vol. 5.

[94] Affidavit of Sgt.-Major Gito, Annex C, Vol. 5.

[95] *Ibid.*

[96] See, the affidavits of Haji Junuddin and Idris Said, Annexes K and M, Vol. 5.

> "3. The Indonesian Naval Fleet, in conducting patrol in the waters surrounding Sipadan and Ligitan Islands, is to be guided by the followings:
>
> "a. To hold the Chief of Staff of the Armed Force's telegram N° TR/1076/1990 dated 3 December 1990 regarding the need to intensify patrol activities within Sebatik waters and to keep avoiding any action which can be considered hostile or which can worsen the situation.
>
> "b. While the issue on the title of sovereignty over Sipadan and Ligitan Islands is being handled by the Department of Foreign Affairs, territorial claim of Indonesia remains at 4°10' North Latitude.
>
> "c. The limit for Patrol activities is 4°10' North Latitude, taking into account the content of Chief of Staff of the Armed Forces' telegram N° TR/1076/1990.
>
> "4. To avoid any possible conflict during patrols conducted by the two sides, this matter will be taken up in the agenda of General Border Committee for necessary arrangements such as possible establishment of a joint or coordinated patrol"[97].

8.94 Finally, the dates of Indonesia's protests and Malaysia's counter-protests are not without relevance. For the most part, they date from 1992 to 1994 - i.e., the period during which Malaysia built a scuba-diving centre on Sipadan and substantially modified the natural environment of the island. Indonesia's firm protests exclude the possibility that the illegal occupation of the island could be opposable to Indonesia.

8.95 In Indonesia's view, it is important to place in context the legal scope of the "war of the diplomatic notes" that both States engaged in. As the Department of Foreign Affairs of the Republic of Indonesia commented in its *note verbale* of 24 August 1993 addressed to the Malaysian Embassy in Jakarta:

> "What the Government of Indonesia wishes to hear at this stage is an official, legally justified observation or remarks from the Malaysian Government side to the Indonesian Government's Reply and not

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[97] Annex 145, Vol. 4.

> merely repetitions of statements of sovereignty claims or statement of political readiness to negotiate through a series of diplomatic notes without, however, exercising self-restraint or maintaining the status quo with regards to the two islands but instead continuing unilateral actions and occupation of these islands"[99].

8.96 These comments are just as relevant today: unlike Malaysia, which occupied the two disputed islands in breach of the *status quo* agreement, Indonesia has consistently sought to act with the greatest restraint in order to avoid poisoning the dispute further and aggravating the tension.

8.97 In conclusion, it is clear that:

(i) Malaysia's activism which began with the publication of the 1979 map, followed by the occupation of Pulau Sipadan, could not modify the legal situation at the critical date when the dispute submitted to the Court arose - i.e., 1969 - when Malaysia, for the first time, advanced its territorial claims concerning the two islands;

(ii) the legal situation is based on the conventional title represented by the Anglo-Dutch Convention of 1891, which established a boundary line between the respective territorial possessions of The Netherlands and Great Britain, extending along the 4°10' N parallel out to sea;

(iii) this legal situation was recognised by Malaysia itself during the period which immediately followed the statement of its claims in 1969;

(iv) the legal situation has not been altered by the occupation of the two islands from the end of the 1980s; and

(v) whilst respecting its undertaking to abide by the *status quo* agreement and resolve the dispute peacefully, Indonesia has consistently maintained its territorial title and has never acquiesced in Malaysia's illegal activities in the disputed area.

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[99] Annex 169, Vol. 4.

# CHAPTER IX

## SUMMARY OF INDONESIA'S CASE AND CONCLUSIONS

**9.1 In conformity with the directives given by the Court[1], the Republic of Indonesia presents in this chapter a summary of its reasoning in the present case.**

**9.2 In Indonesia's opinion, each of the two disputed islands belong to it by virtue of the territorial title inherited from The Netherlands, its colonial predecessor. This title is based on the Anglo-Dutch Convention of 20 June 1891.**

**9.3 This instrument represented a compromise and eliminated all existing doubts as to the precise extent of the respective territories of the Sultan of Boeloengan (to whose rights The Netherlands, then Indonesia, have succeeded), on the one hand, and those of the Sultans of Brunei and Sulu (the predecessors of Great Britain and Malaysia), on the other hand.**

**9.4 According to Articles I and IV of the 1891 Convention, duly ratified by both States:**

> **"The boundary between the Netherlands possessions in Borneo and those of the British-protected States in the same island shall start from 4° 10' north latitude on the east coast of Borneo"**

**and**

> **"From 4°10' north latitude on the east coast the boundary-line shall be continued eastward along that parallel, across the Island of Sebittik: that portion of the island situated to the north of that parallel shall belong unreservedly to the British North Borneo Company, and the portion south of that parallel to the Netherlands".**

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[1] **Para. 3(B) of the Annex to Press Communiqué 98/14.**

9.5 This last provision clearly establishes that the parties intended to delimit completely and definitively their respective possessions including those lying to the east of Sebatik on either side of the 4° 10' N parallel. In conformity with the text of the Convention, this interpretation is confirmed further by the practice of the parties at the time of its conclusion and in the period immediately following it.

9.6 Three facts are particularly important in this respect:

- First, during the month of June 1891, two British vessels (HMS *Egeria* and HMS *Rattler*) and a Dutch vessel (the HNLMS *Banda*) undertook jointly the naval survey of the region and reconnoitred all the neighbouring islands, including Sipadan and Ligitan;

- Second, the Bill submitted to the States-General by the Dutch Government with a view to securing the ratification of the Convention was accompanied by an "Explanatory Memorandum", which contained a map that showed the line of the parallel 4° 10' N extending seaward, beyond Sebatik[2]; this map did not raise any protest from the British authorities to which it had been transmitted;

- Finally, the Contract of 1878, as amended in order to specify the extent of Dutch possessions in Borneo in accordance with the Convention, indicates:

> "... the Islands of Tarakan and Nanoekan, and that portion of the Island of Sebitik, situated to the south of the above boundary-line, described in the *Indisch Staatsblad* of 1892, No. 114, belong to Boeloengan, as well as the small islands belonging to the above islands, so far as they are situated to the south of the boundary-line ...";

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[2] Map No. 5 in the Map Atlas.

It is clear from the above that the purpose of the line defined by the 1891 Convention was not only that of delimiting the mainland territory belonging to each party, but also that of allocating the islands on either side of this line. Moreover, the British Government, to which the text of this amendment had been communicated in 1895, did not raise the least objection regarding this interpretation.

9.7 The 4° 10' N parallel has always been to the south of claims made by Spain. The United States showed, in the period following its succession to Spain, a rather indecisive attitude, one notable example of which was the expedition of the U.S.S. *Quiros* in 1903 which extended its reconnoitring exercise as far as Sipadan. However, in this same year, the United States showed great caution regarding the extent of its possessions in the region and, from 1904, renounced all claims as extreme as the example mentioned above. Moreover, in 1930 the United States entered into a Convention which limited their possessions to areas lying well to the north of the two islands.

9.8 The two islands of Ligitan and Sipadan were uninhabited and presented limited economic interest. However, The Netherlands and Great Britain did, occasionally, show some interest in Sipadan and Ligitan. Notably, a very meaningful episode concerning sovereignty in the area dates from 1921, namely the HNMLS *Lynx* expedition. This Dutch vessel was engaged in the pursuit of pirates. It visited Sipadan but did not enter areas under British jurisdiction lying north of the 4°10' latitude.

9.9 In more general terms, in practice, the two successor States to the parties which signed the 1891 Convention have respected the areas which they have respectively recognised as appertaining to each other with regard to both maritime patrolling activities in the region and the oil concessions which they have granted. Similarly, the maps issued by the parties or by third States are clear confirmatory evidence that the line resulting from the 1891 Convention divided the parties' respective possessions both on the mainland and at sea.

9.10 In any event, in conformity with a well established principle of international law, the territorial encroachments which both sides may have effected cannot put in question a valid and clear territorial title. The same reasoning applies to the map evidence, which can only confirm such a title.

9.11 This reasoning applies equally, *a fortiori*, to the cartographic activities or the activities on the ground following the critical date constituted by the emergence of the dispute during the 1969 negotiations concerning the delimitation of the respective continental shelves and which culminated in an agreement settling this problem in part. However, on this occasion, the Parties noted their difference of views as to the appurtenance of the disputed islands and decided to leave the question pending but to abstain from undermining the *status quo* situation. Malaysia did not respect the agreement on this point and this led to systematic protests from Indonesia.

9.12 It is all the more significant that, even after this date, Malaysia - and, more precisely, the same cartographic authorities that had instigated this country's claims in 1969 - published in 1972 an official map reproducing the 4°10' N parallel line and extending it seawards well beyond the island of Sebatik. It is also particularly revealing that, during the 1990s, both States established and maintained buoys to assist navigation in the region - buoys which were situated precisely on either side of the line. Similarly, the two Parties have not put in question the existing oil concessions, which respect the 1891 line.

9.13 These elements taken as a whole, together with all the facts which have been described in a more detailed fashion in the preceding chapters of this Memorial, clearly establish that all the islands situated to the south of the parallel 4° 10' N belong to Indonesia. Pulau Ligitan and Pulau Sipadan lie to the south of that parallel and sovereignty over each of them thus belongs to Indonesia.

## SUBMISSIONS

**1. On the basis of the considerations set out in this Memorial, the Republic of Indonesia requests the Court to adjudge and declare that:**

**(a) sovereignty over Pulau Ligitan belongs to the Republic of Indonesia; and**

**(b) sovereignty over Pulau Sipadan belongs to the Republic of Indonesia.**

……………………………

**Nugroho Wisnumurti**

**Agent of the Republic of Indonesia**

# CERTIFICATION

I have the honour to certify the accuracy of the translations into English made by Indonesia which appear in the Memorial and its Annexes. I also certify that the documents annexed are true copies and conform to the original documents.

..............................

Mr. Nugroho Wisnumurti
Agent of the Republic of Indonesia

**CASE CONCERNING SOVEREIGNTY OVER PULAU LIGITAN AND PULAU SIPADAN**

**(INDONESIA/MALAYSIA)**

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# MEMORIAL

**SUBMITTED BY**

**THE GOVERNMENT OF THE REPUBLIC OF INDONESIA**

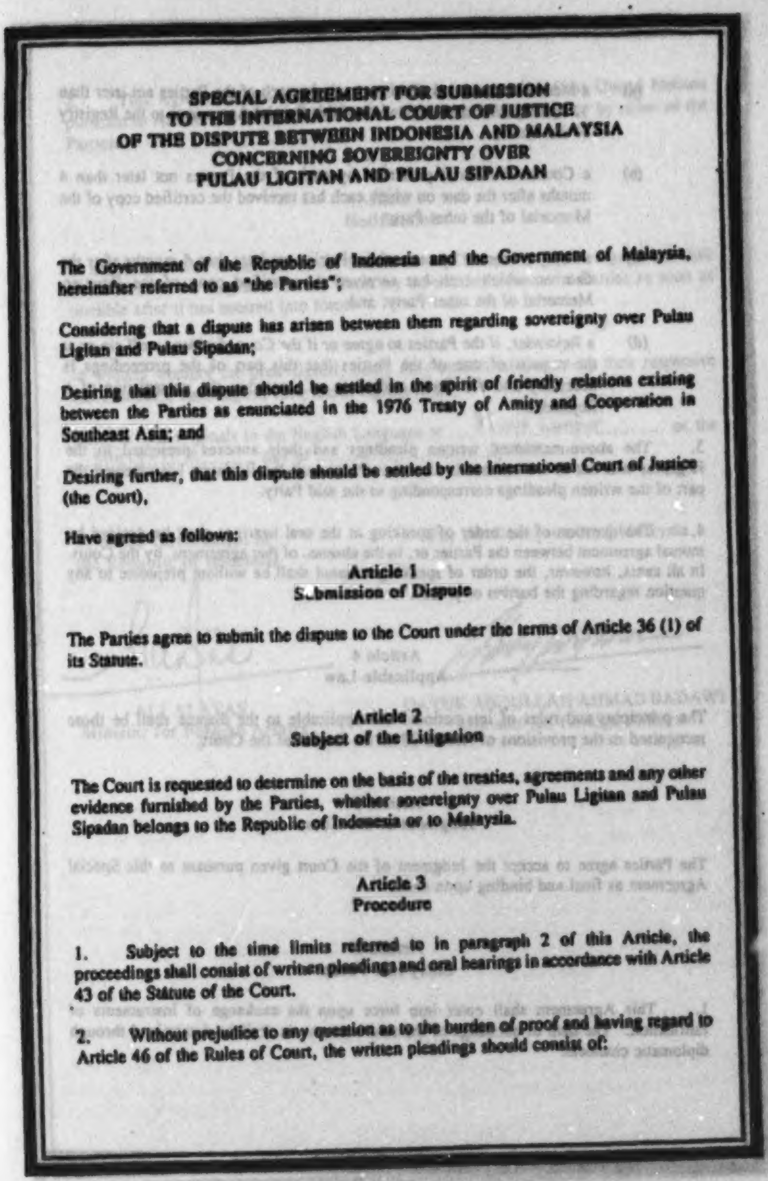
**Volume 2**

**(Annexes 1 to 56)**

**2 NOVEMBER 1999**

## Annex 1

# SPECIAL AGREEMENT FOR SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE OF THE DISPUTE BETWEEN INDONESIA AND MALAYSIA CONCERNING SOVEREIGNTY OVER PULAU LIGITAN AND PULAU SIPADAN, BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF MALAYSIA, DATED 31 MAY 1997



## SPECIAL AGREEMENT FOR SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE OF THE DISPUTE BETWEEN INDONESIA AND MALAYSIA CONCERNING SOVEREIGNTY OVER PULAU LIGITAN AND PULAU SIPADAN

**The Government of the Republic of Indonesia and the Government of Malaysia, hereinafter referred to as "the Parties";**

**Considering that a dispute has arisen between them regarding sovereignty over Pulau Ligitan and Pulau Sipadan;**

**Desiring that this dispute should be settled in the spirit of friendly relations existing between the Parties as enunciated in the 1976 Treaty of Amity and Cooperation in Southeast Asia; and**

**Desiring further, that this dispute should be settled by the International Court of Justice (the Court),**

**Have agreed as follows:**

### Article 1
### Submission of Dispute

**The Parties agree to submit the dispute to the Court under the terms of Article 36 (1) of its Statute.**

### Article 2
### Subject of the Litigation

**The Court is requested to determine on the basis of the treaties, agreements and any other evidence furnished by the Parties, whether sovereignty over Pulau Ligitan and Pulau Sipadan belongs to the Republic of Indonesia or to Malaysia.**

### Article 3
### Procedure

**1. Subject to the time limits referred to in paragraph 2 of this Article, the proceedings shall consist of written pleadings and oral hearings in accordance with Article 43 of the Statute of the Court.**

**2. Without prejudice to any question as to the burden of proof and having regard to Article 46 of the Rules of Court, the written pleadings should consist of:**

**(a)** **a Memorial presented simultaneously by each of the Parties not later than 12 months after the notification of this Special Agreement to the Registry of the Court;**

**(b)** **a Counter-Memorial presented by each of the Parties not later than 4 months after the date on which each has received the certified copy of the Memorial of the other Party;**

**(c)** **a Reply presented by each of the Parties not later than 4 months after the date on which each has received the certified copy of the Counter-Memorial of the other Party; and**

**(d)** **a Rejoinder, *if the Parties so agree or if the Court decides ex officio or at* the request of one of the Parties that this part of the proceedings is necessary and the Court authorises or prescribes the presentation of a Rejoinder.**

**3. The above-mentioned written pleadings and their annexes presented to the Registrar will not be transmitted to the other Party until the Registrar has received the part of the written pleadings corresponding to the said Party.**

**4. The question of the order of speaking at the oral hearings shall be decided by mutual agreement between the Parties or, in the absence of that agreement, by the Court. In all cases, however, the order of speaking adopted shall be without prejudice to any question regarding the burden of proof.**

### Article 4
### Applicable Law

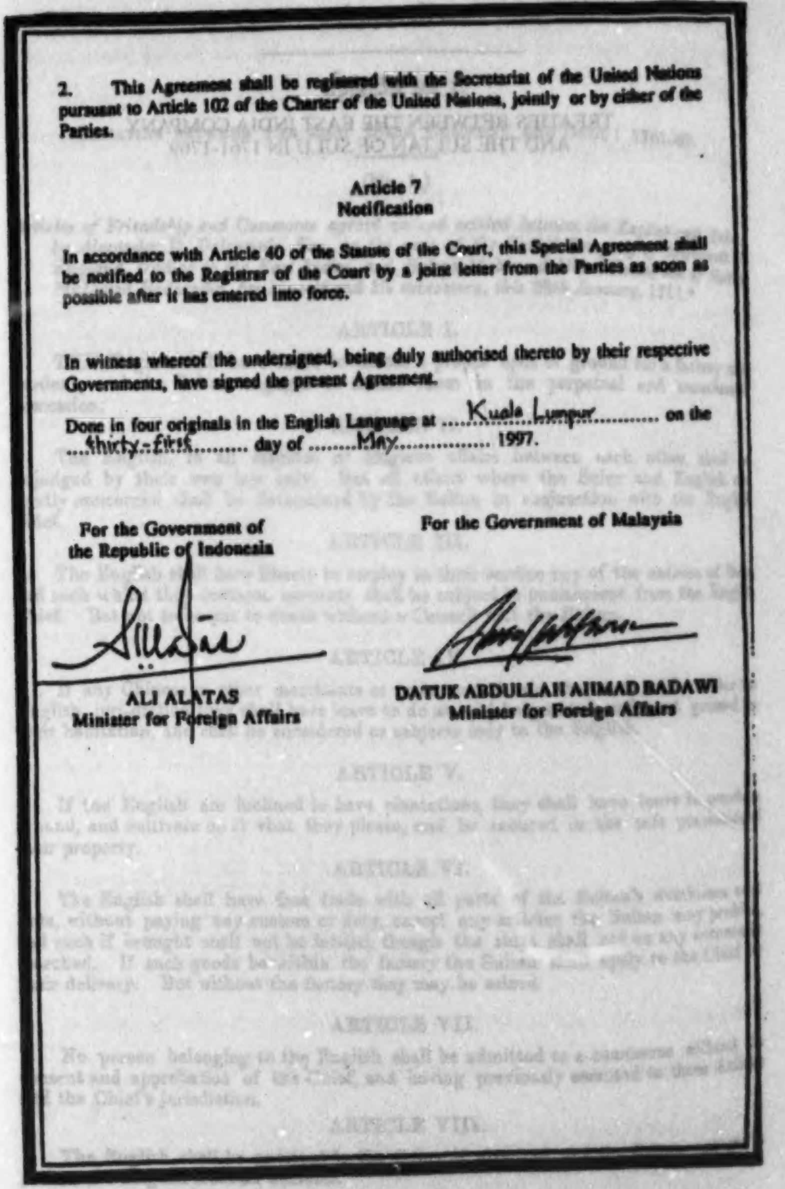
**The principles and rules of international law applicable to the dispute shall be those recognised in the provisions of Article 38 of the Statute of the Court.**

### Article 5
### Judgment of the Court

**The Parties agree to accept the Judgment of the Court given pursuant to this Special Agreement as final and binding upon them.**

### Article 6
### Entry into Force

**1. This Agreement shall enter into force upon the exchange of instruments of ratification. The date of exchange of the said instruments shall be determined through diplomatic channels.**



2. This Agreement shall be registered with the Secretariat of the United Nations pursuant to Article 102 of the Charter of the United Nations, jointly or by either of the Parties.

### Article 7
### Notification

In accordance with Article 40 of the Statute of the Court, this Special Agreement shall be notified to the Registrar of the Court by a joint letter from the Parties as soon as possible after it has entered into force.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

Done in four originals in the English Language at ....Kuala Lumpur.......... on the ....thirty-first......... day of ........May............... 1997.

| For the Government of the Republic of Indonesia | For the Government of Malaysia |
|---|---|
| **ALI ALATAS**<br>**Minister for Foreign Affairs** | **DATUK ABDULLAH AHMAD BADAWI**<br>**Minister for Foreign Affairs** |

# Annex 2

# TREATIES BETWEEN THE EAST INDIA COMPANY AND THE SULTAN OF SULU IN 1761-1769

# Appendix.

## Appendix No. 1.

## TREATIES BETWEEN THE EAST INDIA COMPANY AND SULU: 1761-63.

### (No. 1.)

*Articles of Friendship and Commerce agreed on and settled between the English and Sulus, by Alexander D. Dalrymple, Esq., on the part of the United Company of Merchants of England, trading to the East Indies, and Sultan Mohammed Muh-i-Tudin, son of Sultan Mahamed Baderadin, for himself and his successors, this 28th January, 1761.**

### ARTICLE I.

THE English shall have leave to choose a proper spot of ground for a factory and gardens, and the Sultan engages to secure them in the perpetual and unmolested possession.

### ARTICLE II.

The English, in all disputes or litigious affairs between each other, shall be adjudged by their own law only. But all affairs where the Sulus and English are jointly concerned shall be determined by the Sultan in conjunction with the English Chief.

### ARTICLE III.

The English shall have liberty to employ in their service any of the natives of Sulu, and such whilst they continue servants shall be subject to punishment from the English Chief. But not to be put to death without a Council with the Sultan.

### ARTICLE IV.

If any Chinese or other merchants or tradesmen should choose to settle under the English jurisdiction they shall have leave to do so, and be granted sufficient ground for their habitation, and shall be considered as subjects only to the English.

### ARTICLE V.

If the English are inclined to have plantations, they shall have leave to purchase ground, and cultivate on it what they please, and be secured in the safe possession of their property.

### ARTICLE VI.

The English shall have free trade with all parts of the Sultan's dominions as at Sulu, without paying any custom or duty, except any articles the Sultan may prohibit, and such if brought shall not be landed, though the ships shall not on any account be searched. If such goods be within the factory the Sultan shall apply to the Chief for their delivery. But without the factory they may be seized.

### ARTICLE VII.

No person belonging to the English shall be admitted to a commerce without the consent and approbation of the Chief, and having previously assented to these Articles and the Chief's jurisdiction.

### ARTICLE VIII.

The English shall be assistant to the Sulus if attacked, and the Sultan engages to protect the English from all enemies.

* See date at end of the Treaty.

### ARTICLE IX.

The Sultan engages to admit no other Europeans but the English to any trade in his dominions.

### ARTICLE X.

In case any vessel or cargo is saved by the Sultan two-thirds shall be returned to the owners, and one-third shall be the Sultan's for salvage.

### ARTICLE XI.

If thieves are killed by the English, it shall not be of any account.

### ARTICLE XII.

These Articles to remain in force for ever if ratified by the Company. But, if not approved, three years are allowed to settle others, till when these shall continue in force.

(Signed) A. DALRYMPLE.

*Manila, November 20, 1761.*

I, Sultan Allamodin, son of Badarodin, do accede to this Treaty this 20th day of November, 1761. (Month Rabbe-ol-Akir, 1175.)

(Signed) D. MOOLOOCK MANDEROSSA.
SAWA JOAN.
D. KAM.
DATO BUNDAHARAS.
D. SUTIAN PALLAWAN.
PANGBEMA MILAHAN.
ORAN KY BALOOBKES.
ORAN KY TAJIT.
ORAN KY MALLICK.
D. SARLE LAMA.
HAMAL ALLAM ORDICKS.
HAMAL ALLAM MYNY.
HAMAL ALLAM SUTIN.
MANABER.
ARAM KY OCTAO.
BRUTARA.
OKE HEADMUAN.
OKE AGOLOO.
MARAJA LELA.
MARAJA LELA.
SERI BANGSAWAN.
OKY ABDOOL.
OKY AMOHADDIE.
SERI RAJA.

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### (No. 2.)

*Extract from the Proceedings of the Manila Government.*

*February 8, 1763.*

At a consultation—

**Present:**

Dawsonne Drake, Esq., Deputy-Governor, President;
John Lewin Smith,
Henry Brooke,
Samuel Johnson.

Read the following letter from the King of Sulu:—

"Gentlemen, the Governor, and British Councillors in the City of Manila,

"Whereas there has been a firm and unalterable peace and Treaty of Commerce settled between mine and the English nation, in order to regulate and clear things up, so as no difficulties may hereafter arise that may prevent the execution of it, I beg your Lordship will please to grant me a hearing, and appoint a day or days for the ensuing sessions.

(Signed) "SULTAN OF XOLO.

"*Manila, February 3, 1763.*"

Ordered that the Secretary do make inquiry when it will be agreeable to the King of Sulu to hold a Conference with the Council agreeable to his desire.

---

*Wednesday, February 24, 1763.*

At a consultation—

Present:

Dawsonne Drake, Esq., Deputy-Governor, President;
John Lewin Smith,
Henry Brooke,
Samuel Johnson.

The King and Prince of Sulu, with the Ambassador, attend the Council agreeable to the notice given them.

The King acquaints the Board that some time since an Ambassador arrived with a letter from his brother, the usurper, and the nobles at Sulu, inviting him or son, Prince Israel, to come to take possession of the kingdom, which he lays before the Board, and that if they will furnish him with a conveyance he proposes immediately returning thither.

He offers to cede to the Honourable Company such part of his own dominions on Sulu or Borneo as they may choose to erect forts or factories upon for the security of their trade, to confirm the Treaty of Commerce* between Mr. Dalrymple and the present Prince, to give the English the exclusive privilege of trading free of all customs, and to enter into an alliance, offensive and defensive, for the mutual protection of their possessions.

As these proposals cannot interfere with, but rather confirm, Mr. Dalrymple's plan, the Board accept them with pleasure; but, as affairs may not take so favourable a turn as they expected, they recommend to him, first, to send his son, Prince Israel, and when everything is completed they will send a vessel to carry him thither likewise. This being agreeable to the King, agreed that the sloop be prepared for the reception of Prince Israel, and that the utmost respect be paid to his father during the time he may remain here.

Ordered that Article of Alliance, offensive and defensive, be immediately prepared.

---

*April 14, 1763.*

At a consultation—

Present:

Dawsonne Drake, Esq., Deputy-Governor, President;
John Lewin Smith,
Henry Brooke.

The King of Sulu, the Prince, and the Ambassadors from Sulu and Mindanao attending.

The King and Prince of Sulu confirm and ratify the following Treaty of Alliance agreed to in February last.

Articles of Alliance, offensive and defensive, mutually and reciprocally agreed to between His Majesty Fernando Allamoodin, King of the Island of Sulu and the dependencies thereof, and his son Israel, on the one part, and Dawsonne Drake, Esq., President and Deputy-Governor of the Philippine Islands, and the rest of the Council thereof, on behalf of the Honourable United Company of Merchants of England trading to the East Indies, on the other part.

## ARTICLE I.

The King of Sulu and his son, Prince Israel, for themselves and their successors, for ever cede to the Honourable United Company of Merchants of England trading to the East Indies such part or parts of the Island of Sulu, or the territories thereon dependent, as they may choose to erect forts or factories upon, and they will assist the English therein as much as lies in their power.

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* This Treaty cannot be found in the Records of this Government.

## ARTICLE II.

The King of Sulu or his son, Prince Israel, shall have the Government of the Kingdom in the same absolute manner as their predecessors have had; the English shall not encroach on their prerogatives; the customs and religion of the country shall remain as at present, nor shall the English intermeddle therewith.

## ARTICLE III.

In case the English should erect forts or factories in the King's dominions, and any of the subjects of Sulu should commit a murder on the person of an Englishman or any of their servants or others belonging to any such forts or factories, the King shall cause such murder to be punished with death, and in case the Malays or other subjects of the said King should plunder or rob any person or persons belonging to the said forts or factories, they shall be punished according to the nature of the crime, and in default of the King's causing such punishment to be inflicted, the English shall be at liberty to right themselves.

## ARTICLE IV.

The King and Prince of Sulu fully confirm in every respect the Treaty of Commerce agreed to between Alexander Dalrymple, Esq., on the part of the Honourable English United East India Company, and Sultan Bortilan, on the part of the Sulianese.

## ARTICLE V.

The King and Prince of Sulu, for themselves and their successors, grant to the English an exclusive trade in all their dominions; they alone shall be exempted from all duties, and their goods, whether imported or the produce of the country, shall pass to or from their forts or factories without examination or control.

## ARTICLE VI.

If the King of Sulu should be attacked, the English shall assist him with such force as the situation of their affairs will admit. If the English, in case of their continuance at Manila, or in any other place, should require the assistance of the Sulians, the King shall grant them such a number of men as he can spare, and the enemies of the one shall be considered as the enemies to the other.

In confirmation of the above Articles, Fernando Allamoodin, King of Sulu, and his son, Prince Israel, on their part, have set their hands and seals, and Dawsonne Drake, Esq., Deputy-Governor of the Philippine Islands, and the rest of the Council thereof, on the part of the East India Company, have set their hands and the seals of the said Company, in Manila, this 23rd day of February, in the year of Christ 1763, or, according to the Mahommedan era, 1176.

The Governor represents to the Prince the readiness with which we have assisted him, that he therefore hopes he will not forget the friendship he now possesses for the English, and that he will on every occasion, and in every respect, assist them as far as possible.

The Prince returns the Board thanks for the favours they have conferred upon him, and assures them he shall esteem himself happy in every opportunity he may have of convincing them how just a sense he has of the obligations he has received.

The Governor then addresses himself to the Ambassador from Sulu, who assures him that he will use all his endeavours to keep up a good correspondence with the English, and that he shall always number* the favours bestowed upon him.

The Mendanao's Ambassador also assures the Board of his readiness to acknowledge the obligations he owes to them, and that he will use all his interest with the Sultan, his master, to persuade him to deliver up the fort of Samboangan, or any other of the Spanish Settlements on the island, to Mr. Durand, whom, in gratitude, he will assist as far as in his power, and that, if his master will not break with the Spaniards, he will endeavour to get him to make a grant to the English of a place for a Settlement.

Ordered, that the Resident at Sulu be advised of 1,000 dollars lent to the Prince

* The Sense cannot be found in the Records of the Government.

on his bond, which he is to pay at Sulu in the commodities of his country, and of 500 dollars lent to the Ambassador from Mandanao on his obligation, of which he promises to send wax, &c., productions of the island, to the Company's Resident at Sulu.

(Signed) H. C. Montgomery, *Chief Secretary.*

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## (No. 3.)

### *Grant from the Sultan of Sulu. 1764.*

I, Sultan Mahomed Allumodin, son of Sultan Mahomed Badarodin, who governs this Island of Sulu and all its dominions, do acknowledge to have sold to the English Company my right to the part of Borneo from Towson Abai to Kimanis, the Island of Palawan, and all the other islands to the northward of Borneo. In return for the benefits I have received from the said Company, I give up to them all my pretensions and rights, and those of my successors, to these lands and islands, and all that belong to them, and ratify to the Company the full possession of Balambangan. The said Company may give the government of these lands and islands to any of my sons and relations if the said Company think proper.

In testimony of the truth of these Decrees and Agreements, I have hereunto put my seal and affixed my name, to show to all ages the rights of the said Company, and I request all my friends, and order and command all my vassals in the said lands and islands, that they do conform to this declaration of my will and pleasure.

(Translated from Sulu into Spanish by Vizentio di Azuriedo, and from Spanish into English by A. Dalrymple.)

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## (No. 4.)

*Articles of Friendship and Commerce concluded between the English and Sulus by Alexander Dalrymple, Esq., on the part of the United Company of Merchants of England trading to the East Indies, and Sultan Mahomet Ally Medin, son of Sultan Badaredin, for himself and his successors, and by the Datus, Oranhye, and others, of Sulu, for themselves and their successors, on the part of Sulu, this 28th day of September, 1764.*

### ARTICLE I.

There shall be perpetual friendship between the English and Sulus, each party giving due satisfaction for any trespass that may be committed by any person or persons to the other, and all such disputes wherein English and Sulus are jointly concerned shall be determined by the Sultan in conjunction with the English Chief.

### ARTICLE II.

The English shall have leave to purchase a proper spot of ground for a factory and gardens, of which the Sultan engages to secure them in the unmolested possession for ever.

### ARTICLE III.

If any Chinese or others shall choose to settle under the English jurisdiction, they shall have leave to do so, and be granted under the English, and at the application of the Chief, sufficient ground for their habitation, and shall be considered as subjects only to the English.

### ARTICLE IV.

No English, or strangers under the English jurisdiction, shall be received or protected by the Sulus without the consent of the English Chief. And, on the other part, no Sulus, or others under their jurisdiction, shall be received or protected by the English without the Sultan's consent.

### ARTICLE V.

The English shall have free liberty to employ in their service any of the natives of Sulu, and such, whilst in the English service, shall be subject to punishment from the English Chief, but not to be put to death without a Council with the Sultan.

## ARTICLE VI.

All disputes or litigious affairs between the English and between persons under their jurisdiction shall be adjudged by the English laws, and the Sulus only be united with the English Chief in determining causes in which the Sulus or persons under their jurisdiction are jointly concerned with the English or others under the English jurisdiction.

## ARTICLE VII.

If the English are inclined to have plantations, they shall have leave to purchase any ground in possession of any individual who may be willing to dispose of it to them, or, if they choose any ground not immediately possessed by any one, they shall, on the Chief's application, have a grant of it, and, in that case, be secured in perpetual possession, with permission to cultivate what they please free from all molestation.

## ARTICLE VIII.

The English shall have a free trade, without paying any custom or duty, except on certain articles now declared contraband. If such articles happen to be in the ships who come to Sulu, they shall not be landed; but, if clandestinely landed, the Sultan may seize them without the factory. If within the factory, the Sultan shall make application to the Chief for their delivery; but the ships and factory shall be free from all search or molestation on any account whatever, as well as goods of the Company's passing from one to the other.

## ARTICLE IX.

If any thieves shall be killed by the English it shall not be accounted a transgression, and also if any persons shall approach the ships or factory in the night, or in numbers, without giving due account of themselves, and the English fire upon them, they shall not be responsible for the consequences which may ensue to any such persons.

## ARTICLE X.

The Sultan, officers, and others of Sulu engage not to admit any other Europeans but the English to a commerce in these dominions, nor to form any Treaty with Europeans inconsistent with this Treaty, and promise in good faith to communicate all applications from other Europeans, and correspondence held with them, to the English Chief, who shall also communicate to the Sultan everything coming to his knowledge regarding the interest of Sulu.

## ARTICLE XI.

No person belonging to the English shall be admitted to a commerce in the Sulu dominions without the consent and approbation of the Chief, and having previously assented to the Articles of this Treaty and the Chief's jurisdiction.

## ARTICLE XII.

In case any vessel is lost in the Sultan's dominions, and any part of the vessel or cargo is saved by the Sulus, two-thirds shall be returned to the owners, and one-third shall belong to the Sulus, for salvage.

## ARTICLE XIII.

The English and Sulus mutually engage to be assistant to each other in case of either being attacked.

## ARTICLE XIV.

It is agreed that all English, or persons belonging to the English, with the Chief's passport, or persons going to the English, shall pass with their effects free and unmolested through all parts of the Sultan's present or future dominions. But the English stipulate that they shall not send any goods to the outports, to purchase birds' nests; but for the purchase of other things they may send what vessels they choose to all parts of the Sulu dominions, without interruption or impost.

These Articles, if ratified by the Company, to continue in force for ever, and three years are stimulated for the Company's determination, till when this Treaty is to continue in full force.

(Signed) A. DALRYMPLE.

## (No. 5.)

## *Grant from the Sultan of Sulu.* 1709.

(Translation.)

I, Sultan Mahomet Allemodin, son of Sultan Mahomet Badaradin, King of the Island of Sulu and all its dominions, do acknowledge, and hereby confirm, to have sold to the English East India Company, all my right and title to the north part of Borneo from Kimanis on the west side, in a direct line to Towson Abai on the east side, thereof, with all the lands, places, and people, &c., within those limits, and also all the islands to the northward of the said Island of Borneo, as Balambangan, Palawan, Banguey, Balabac, Monnach, and all the other islands adjoining, as well on the north and east and west sides of those parts of my dominions. All this I do and confirm in consideration of the benefit which I have received from the said Company.

To them, the said Company, I also give and grant all my pretensions and rights, and those of my subjects and successors, to those lands and islands, &c., as aforesaid, with everything in anywise belonging unto them.

I also grant and confirm unto the said Company a free and exclusive right and title to the trade and commerce of all my dominions, and to them only I grant the liberty of fishing for pearls in any and through every part thereof, without any molestation whatsoever.

Moreover, I oblige myself to go in person, or to send some proper person, as it may be required, to the above-mentioned islands and places, to bring their respective people under due subjection to the aforesaid Company.

In testimony to the truth of which I have put my hand and seal to this grant and to those decrees, that all nations and ages may see the right of the said Company; and I beg of all my friends, and command all my subjects, to conform to this declaration of my will and pleasure.

## Annex 3

## CONTRACT BETWEEN THE SULTAN OF BANJERMASIN AND THE GOVERNMENT OF THE NETHERLANDS EAST INDIES DATED 3 JANUARY 1817 (EXTRACT FROM DUTCH VERSION AND ENGLISH TRANSLATION)

## TRANSCRIPT AND TRANSLATION

### Contract between the Sultan of Banjermasin and the Government of the Netherlands East Indies

### 3 January 1817

### Transcript of Article 5

Zijne Hoogheid de Padoeka Sri Sultan Sleeman Almoh Tamit Alalah regerend vorst van het gansche Rijk van Banjermasing staat af in vollen eigendom en Souvereiniteit aan Zijne Majesteit den Koning der Nederlanden het Eiland de Stad en het fort te Tatas en de Kween de gezamenlijke Dajaksche provincien benevens de provincien Mendawie, Sampet Kotteringien en onderhoorigheden, voorts Sentan, Lawai en Jelde Bekompai, Tabanjaauw, Pagatan en het Eiland Lout, Pasir, Kotie, Barrau en alle hunne onderhoorigheden.

### Translation of Article 5

His Highness the Padoeka Sri Sultan Sleeman Almoh Tamit Alalah reigning prince of the entire realm of Banjermasin cedes in full property and sovereignty to his Majesty the King of the Netherlands the Island the City and the Fortress at Tatas and the Kween the combined Dajak provinces together with the provinces of Mendawie, Sampet Kotteringien and dependencies, furthermore Sentan, Lawie and Jelde Bekompai, Tabanjaauw, Pagatan and the island of Lout, Pasir, Kotie, Barrau and all their dependencies.

## Annex 4

# CONTRACT BETWEEN THE SULTAN OF BANJERMASIN AND THE GOVERNMENT OF THE NETHERLANDS EAST INDIES DATED 13 SEPTEMBER 1823

## (EXTRACT FROM DUTCH VERSION AND ENGLISH TRANSLATION)

# TRANSCRIPT AND TRANSLATION

## Contract between the Sultan of Banjermasin and the Government of the Netherlands East Indies

**13 September 1823**

**(amending the contract of 3 January 1817)**

### Transcript of Article 2.

**Het vijfde Artikel van het contract, wordt bij deze verklaard te zijn vervallen en veranderd in volgender voege: Zijne Hoogheid de Sulthan Sleman, staat af in vollen Eigendom aan Zijne Majesteit den Koning der Nederlanden, het geheele eiland Tatas en de Kween, tot aan den linker oever van de Antassan Ketjiel, Lewai, Jelai, Sintang, Tabangauw, Pagatan, en het eiland Poeloe Laut, Kotta Ringen, Passir, Koti, Barouw, en alle hunne onderhoorigheden. – (…………..).**

### Translation of Article 2.

**Article 5 of the contract is hereby declared cancelled and amended as follows: His Highness Sultan Sleman cedes in full property to His Majesty the King of the Netherlands the entire island of Tatas and the Kween, up to the left bank of the Antassan Ketjiel, Lewai, Jelai, Sintang, Tabangauw, Pagatan, and the island of Poeloe Laut, Kotta Ringen, Passir, Koti, Barouw, and all their dependencies. - (…………….).**

## Annex 5

# TREATY BETWEEN GREAT BRITAIN AND THE NETHERLANDS SIGNED AT LONDON, 17 MARCH 1824

## Appendix No. 4.

### *Treaty between Great Britain and the Netherlands.—(Signed at London,* [redacted]

*In the Name of the Most Holy and Undivided Trinity.*

HIS Majesty the King of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the Netherlands, desiring to place upon a footing, mutually beneficial, their respective possessions and the commerce of their subjects in the East Indies, so that the welfare and prosperity of both nations may be promoted, in all time to come, without those differences and jealousies which have, in former times, interrupted the harmony which ought always to subsist between them; and being anxious that all occasions of misunderstanding between their respective Agents may be, as much as possible, prevented; and in order to determine certain questions which have occurred in the execution of the Convention made at London on the 13th August, 1814, in so far as it respects the possessions of His Netherlands Majesty in the East, have nominated their Plenipotentiaries, that is to say:—

His Majesty the King of the United Kingdom of Great Britain and Ireland, the Right Honourable George Canning, a Member of His said Majesty's Most Honourable Privy Council, a Member of Parliament, and His said Majesty's Principal Secretary of State for Foreign Affairs; and the Right Honourable Charles Watkin Williams Wynn, a Member of His said Majesty's Most Honourable Privy Council, a Member of Parliament, Lieutenant-Colonel Commandant of the Montgomeryshire Regiment of Yeomanry Cavalry, and President of His said Majesty's Board of Commissioners for the Affairs of India:

And His Majesty the King of the Netherlands, Baron Henry Fagel, Member of the Equestrian Corps of the Province of Holland, Councillor of State, Knight Grand Cross of the Royal Order of the Belgic Lion, and of the Royal Guelphic Order, and Ambassador Extraordinary and Plenipotentiary of His said Majesty to His Majesty the King of Great Britain; and Anton Reinhard Falck, Commander of the Royal Order of the Belgic Lion, and His said Majesty's Minister of the Department of Public Instruction, National Industry, and Colonies;

Who, after having mutually communicated their full powers, found in good and due form, have agreed on the following Articles:—

[250] H

## ARTICLE I.

The High Contracting Parties engage to admit the subjects of each other to trade with their respective possessions in the Eastern Archipelago, and on the Continent of India, and in Ceylon, upon the footing of the most favoured nation, their respective subjects conforming themselves to the local Regulations of each Settlement.

## ARTICLE II.

The subjects and vessels of one nation shall not pay, upon importation or exportation, at the ports of the other in the Eastern Seas, any duty at a rate beyond the double of that at which the subjects and vessels of the nation to which the port belongs are charged.

The duties paid on exports or imports at a British port, on the Continent of India, or in Ceylon, on Dutch bottoms, shall be arranged so as, in no case, to be charged at more than double the amount of the duties paid by British subjects, and on British bottoms.

In regard to any article upon which no duty is imposed, when imported or exported by the subjects, or on the vessels, of the nation to which the port belongs, the duty charged upon the subjects or vessels of the other shall in no case exceed 6 per cent.

## ARTICLE III.

The High Contracting Parties engage that no Treaty hereafter made by either, with any native Power in the Eastern Seas, shall contain any Article tending, either expressly, or by the imposition of unequal duties, to exclude the trade of the other Party from the ports of such native Power; and that if, in any Treaty now existing on either part, any Article to that effect has been admitted, such Article shall be abrogated upon the conclusion of the present Treaty.

It is understood that, before the conclusion of the present Treaty, communication has been made by each of the Contracting Parties to the other of all Treaties or engagements subsisting between each of them respectively, and any native Power in the Eastern Seas; and that the like communication shall be made of all such Treaties concluded by them respectively hereafter.

## ARTICLE IV.

Their Britannic and Netherlands Majesties engage to give strict orders, as well to their civil and military authorities as to their ships of war, to respect the freedom of trade established by Articles I, II, and III; and, in no case, to impede a free communication of the natives in the Eastern Archipelago, with the ports of the two Governments respectively, or of the subjects of the two Governments with the ports belonging to native Powers.

## ARTICLE V.

Their Britannic and Netherlands Majesties, in like manner, engage to concur effectually in repressing piracy in those seas. They will not grant either asylum or protection to vessels engaged in piracy, and they will in no case permit the ships or merchandise captured by such vessels to be introduced, deposited, or sold in any of their possessions.

## ARTICLE VI.

It is agreed that orders shall be given by the two Governments to their Officers and Agents in the East not to form any new Settlement on any of the islands in the Eastern Seas, without previous authority from their respective Governments in Europe.

## ARTICLE VII.

The Molucca Islands, and especially Amboyna, Banda, Ternate, and their immediate Dependencies, are excepted from the operation of the Ist, IInd, IIIrd, and IVth Articles, until the Netherlands Government shall think fit to abandon the monopoly of spices; but if the said Government shall, at any time previous to such abandonment of the monopoly, allow the subjects of any Power, other than a native Asiatic Power, to carry on any commercial intercourse with the said Islands, the subjects of His Britannic Majesty shall be admitted to such intercourse upon a footing precisely similar.

## ARTICLE VIII.

His Netherlands Majesty cedes to His Britannic Majesty all his establishments on the Continent of India; and renounces all privileges and exemptions enjoyed or claimed in virtue of those establishments.

## ARTICLE IX.

The factory of Fort Marlborough, and all the English possessions on the Island of Sumatra, are hereby ceded to His Netherlands Majesty; and His Britannic Majesty further engages that no British Settlement shall be formed on that Island, nor any Treaty concluded by British authority with any native Prince, Chief, or State therein.

## ARTICLE X.

The town and fort of Malacca, and its Dependencies, are hereby ceded to His Britannic Majesty; and His Netherlands Majesty engages, for himself and his subjects, never to form any establishment on any part of the Peninsula of Malacca, or to conclude any Treaty with any native Prince, Chief, or State therein.

## ARTICLE XI.

His Britannic Majesty withdraws the objections which have been made to the occupation of the Island of Billiton and its Dependencies by the Agents of the Netherlands Government.

## ARTICLE XII.

His Netherlands Majesty withdraws the objections which have been made to the occupation of the Island of Singapore by the subjects of His Britannic Majesty.

His Britannic Majesty, however, engages that no British establishment shall be made on the Carimon Isles, or on the Islands of Battam, Bintang, Lingin, or on any of the other Islands south of the Straits of Singapore, nor any Treaty concluded by British authority with the Chiefs of those Islands.

## ARTICLE XIII.

All the Colonies, possessions, and establishments which are ceded by the preceding Articles shall be delivered up to the Officers of the respective Sovereigns on the 1st March, 1825. The fortifications shall remain in the state in which they shall be at the period of the notification of this Treaty in India; but no claim shall be made on either side for ordnance, or stores of any description, either left or removed by the ceding Power, nor for any arrears of revenue, or any charge of administration whatever.

## ARTICLE XIV.

All the inhabitants of the territories hereby ceded shall enjoy, for a period of six years from the date of the ratification of the present Treaty, the liberty of disposing as they please of their property, and of transporting themselves, without let or hindrance, to any country to which they may wish to remove.

## ARTICLE XV.

The High Contracting Parties agree that none of the territories or establishments mentioned in Articles VIII, IX, X, XI, and XII shall be, at any time, transferred to any other Power. In case of any of the said possessions being abandoned by one of the present Contracting Parties, the right of occupation thereof shall immediately pass to the other

## ARTICLE XVI.

It is agreed that all accounts and reclamations arising out of the restoration of Java and other possessions to the Officers of His Netherlands Majesty in the East Indies, as well as those which were the subject of a Convention made at Java on the 24th June, 1817, between the Commissioners of the two nations, as all others, shall be finally and completely closed and satisfied on the payment of the sum of 100,000*l.* sterling money, to be made in London on the part of the Netherlands, before the expiration of the year 1825.

## ARTICLE XVII.

The present Treaty shall be ratified, and the ratifications exchanged at London within three months from the date hereof, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the same, and affixed thereunto the seals of their arms.

Done at London, the 17th day of March, in the year of our Lord 1824.

(L.S.) GEORGE CANNING.
(L.S.) CHARLES WATKIN WILLIAMS WYNN.
(L.S.) H. FAGEL.
(L.S.) A. R. FALCK.

## Annex 6

# TREATY BETWEEN THE ENGLISH EAST INDIA COMPANY AND THE SULTAN AND THE TUMUNGONG OF JOHORE

## DATED 2 AUGUST 1824

# JOHORE, 1824.

**A TREATY of FRIENDSHIP and ALLIANCE between the HONOURABLE THE ENGLISH EAST INDIA COMPANY on the one side, and their HIGHNESSES the SULTAN and TUMUNGONG of JOHORE on the other, concluded on the**

Second day of August, One Thousand Eight Hundred and Twenty-four (1824), corresponding with the Sixth day of the month of Zulhaji, in the year of the Hejira One Thousand Two Hundred and Thirty-nine (1239), by the above Sultan of Johore, HIS HIGHNESS SULTAN HUSSAIN MAHOMED SHAH, and the above TUMUNGONG of JOHORE, HIS HIGHNESS DATU TUMUNGONG ABDUL RAHMAN SRI MAHARAJAH on their own behalf, and by JOHN CRAWFURD, ESQUIRE, British Resident of Singapore. vested with full powers thereto, by the Right Honourable WILLIAM PITT, LORD AMHERST, Governor-General of and for Fort William in Bengal, on behalf of the said HONOURABLE ENGLISH EAST INDIA COMPANY.

### ARTICLE I.

Peace, friendship, and good understanding shall subsist for ever between the Honourable the English East India Company and their Highnesses the Sultan and Tumungong of Johore and their respective heirs and successors.

### ARTICLE II.

Their Highnesses the Sultan Hussain Mahomed Shah and Datu Tumungong Abdul Rahman Sri Maharajah hereby cede in full sovereignty and property to the Honourable the English East India Company, their heirs and successors for ever, the Island of Singapore, situated in the Straits of Malacca, together with the adjacent seas, straits, and islets, to the extent of ten geographical miles, from the coast of the said main Island of Singapore.

### ARTICLE III.

The Honourable the English East India Company hereby engages, in consideration of the cession specified in the last Article, to pay to His Highness the Sultan Hussain Mahomed Shah, the sum of Spanish Dollars thirty-three thousand two hundred (33,200), together with a stipend, during his natural life, of one thousand three hundred (1,300) Spanish Dollars per mensem, and to His Highness the Datu Tumungong Abdul Rahman Sri Maharajah, the sum of twenty-six thousand eight hundred (26,800) Spanish Dollars, with a monthly stipend of seven hundred (700) Spanish Dollars during his natural life.

### ARTICLE IV.

His Highness the Sultan Hussain Mahomed Shah hereby acknowledges to have received from the Honourable the English East India Company, in fulfilment of the stipulations of the two last Articles, the sum of thirty-three thousand two hundred (33.200) Spanish Dollars, together with the first monthly instalment of the above-mentioned stipend, of Spanish Dollars one thousand three hundred (1,300), and His

Highness the Datu Tumungong Abdul Rahman Sri Maharajah also hereby acknowledges to have received from the Honourable the English East India Company, in fulfilment of the stipulations of the two last Articles, the sum of twenty-six thousand eight hundred Spanish Dollars (26,800), with one month's instalment of the above stipend of seven hundred Spanish Dollars.

### ARTICLE V.

The Honourable the English East India Company engages to receive and treat their Highnesses the Sultan Hussain Mahomed Shah, and Datu Tumungong Abdul Rahman Sri Maharajah, with all the honours, respect, and courtesy belonging to their rank and station, whenever they may reside at, or visit the Island of Singapore.

### ARTICLE VI.

The Honourable the English East India Company hereby engages in the event of their Highnesses the Sultan and Tumungong, their heirs or successors, preferring to reside permanently in any portion of their own States, and to remove for that purpose from Singapore, to pay unto them, that is to say, to His Highness the Sultan Hussain Mahomed Shah, his heir or successor, the sum of twenty thousand (20,000) Spanish Dollars, and to His Highness the Datu Tumungong Abdul Rahman Sri Maharajah, his heir or successor, the sum of fifteen thousand (15,000) Spanish Dollars.[1]

### ARTICLE VII.

Their Highnesses the Sultan Hussain Mahomed Shah and the Datu Tumungong Abdul Rahman Sri Maharajah, in consideration of the payment specified in the last Article, hereby relinquish for themselves, their heirs, and successors, to the Honourable the English East India Company, their heirs and successors for ever, all right and title to every description of immovable property, whether in lands, houses, gardens, orchards, or timber trees, of which their said Highnesses may be possessed within the Island of Singapore or its dependencies at the time they may think proper to withdraw from the said island for the purpose of permanently residing within their own States, but it is reciprocally and clearly understood that the provisions of this Article shall not extend to any description of property which may be held by any follower or retainer of their Highnesses beyond the precincts of the ground at present allotted for the actual residence of their said Highnesses.

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[1] Articles 6 and 7 annulled (see page 124) as far as they relate to the Tumungong.

### ARTICLE VIII.

Their Highnesses the Sultan Hussain Mahomed Shah, and the Datu Tumungong Abdul Rahman Sri Maharajah hereby engage that, as long as they shall continue to reside within the Island of Singapore, or to draw their respective monthly stipends from the Honourable the English East India Company, as provided for in the present Treaty, they shall enter into no alliance and maintain no correspondence with any foreign power or potentate whatsoever, without the knowledge and consent of the said Honourable the English East India Company, their heirs and Successors.

### ARTICLE IX.

The Honourable the English East India Company hereby engages, that, in the event of their Highnesses the Sultan Hussain Mahomed Shah, and the Datu Tumungong Abdul Rahman Sri Maharajah removing from the Island of Singapore, as contemplated in the 6th Article, and being distressed within their own territories on such removal, to afford them, either at Singapore or Prince of Wales' Island, a personal asylum and protection.

### ARTICLE X.

The contracting parties hereby stipulate and agree, that neither party shall be bound to interfere in the internal concerns of the other's government, or in any political dissensions or wars which may arise within their respective territories, nor to support each other by force of arms against any third party whatever.

### ARTICLE XI.

The contracting parties hereby engage to use every means within their power respectively, for the suppression of robbery and piracy within the Straits of Malacca, as well as the other narrow seas, straits, and rivers bordering upon, or within their respective territories, in as far as the same shall be connected with the dominions and immediate interests of their said Highnesses.

### ARTICLE XII.

Their Highnesses the Sultan Hussain Mahomed Shah, and the Datu Tumungong Abdul Rahman Sri Maharajah hereby engage to maintain a free and unshackled trade everywhere within their dominions, and to admit the trade and traffic of the British nation into all the ports and harbours of the kingdom of Johore and its dependencies, on the terms of the most favoured nation.

### ARTICLE XIII.

The Honourable the English East India Company hereby engages, as long as their Highnesses the Sultan Hussain

Mahomed Shah and the Datu Tumungong Abdul Rahman Sri Maharajah shall continue to reside on the Island of Singapore, not to permit any retainer or follower of their said Highnesses who shall desert from their actual service, to dwell or remain in the Island of Singapore or its dependencies. But it is hereby clearly understood, that all such retainers and followers shall be natural born subjects of such parts of their Highnesses' dominions only in which their authority is at present substantially established, and that their names, at the period of entering the service of their Highnesses, shall have been duly and voluntarily inscribed in a register, to be kept for that purpose by the chief local authority for the time being.

### ARTICLE XIV.

It is hereby mutually stipulated for and agreed, that the conditions of all former Conventions, Treaties, or Agreements entered into between the Honourable the English East India Company and their Highnesses the Sultan and Tumungong of Johore, shall be considered as abrogated and annulled by the present Treaty, and they are hereby abrogated and annulled accordingly, always, however, with the exception of such prior conditions as have conferred on the Honourable the English East India Company any right or title to the occupation or possession of the Island of Singapore and its dependencies, as above-mentioned.

Done and concluded at Singapore, the day and year as above written.

(Signed) SULTAN HUSSAIN MAHOMED SHAH.
(Signed) J. CRAWFURD.
DATU TUMUNGONG ABDUL RAHMAN SRI MAHARAJAH.
(Signed) AMERST.
(Signed) EDWARD PAGET.
(Signed) F. FENDALL.

Ratified by the Right Honourable the Governor-General in Council, at Fort William in Bengal, this Nineteenth day of November, One Thousand Eight Hundred and Twenty-four.

(Signed) GEO. SWINTON,
*Secretary to Government.*

## ANNEX 7

# CONTRACT BETWEEN THE SULTAN OF BANJERMASIN AND THE GOVERNMENT OF THE NETHERLANDS EAST INDIES
## DATED 4 MAY 1826
## (EXTRACT FROM DUTCH VERSION AND ENGLISH TRANSLATION)

## TRANSCRIPT AND TRANSLATION

### Contract between the Sultan of Banjermasin and the Government of the Netherlands East Indies

4 May 1826

### Transcript of Article 4

Z.M. den Sultan Adam regerend vorst van Banjermasin staat bij deze af aan Z.M. den Koning der Nederlanden de navolgende landen als:

(................)

De aan de Oostkust gelegene plaatsen:

Pegatan
Poeloe Laut
Batoe liedjin Passir
Kottey, en
Barou

met alle derzelver onderhoorigheden.

### Translation of Article 4

H.M. the Sultan Adam reigning prince of Banjermasin cedes herewith to H.M. the King of the Netherlands the following territories:

(................)

The places on the East Coast:

Pegatan
Poeloe Laut
Batoe liedjin Passir
Kottey, and
Barou

and all their dependencies.

## Annex 8

# CONTRACT BETWEEN THE SULTAN OF BOELOENGAN AND THE GOVERNMENT OF THE NETHERLANDS EAST INDIES DATED 27 SEPTEMBER 1834 (ENGLISH TRANSLATION AND DUTCH VERSION)

## TRANSLATION

1834

1846/no. 160 Secret.

On board H.M. cruising
proa No.18 the 27th of
September 1834.

I Mohammet Sultan of Boeloengan N.E. coast of Borneo promise and swear to in the presence of the Honourable Master Anthonij Anemaet, naval captain commanding H.M. vessels in the waters off Makassar at present at Barrow, that I submit to the Dutch Government, and that I, with my subordinates, shall ever submit to the by same given or yet to be given orders.

Promising that I shall try to chase away the pirates and protect the traders and as soon as opportunity permits to go to Macassar in order to reach a further agreement with the Government at that place and receive further orders.

In witness of the truth, I ratify this with my signature.

The above oath is taken in my hands, and signed in my presence.
The aforesaid naval captain
(sign.) Anth. Anemaet

In the margin is written- This is the mark of Mohammet Sultan Boeloengan, given in our presence.

(sign.) C.L. Lemmiers, 2nd naval lieutenant

(sign.) C.F. Otto, 2nd Lt.
acting A.D.C.

(sign.) Wolff, naval surgeon

-under this is written-

The Assistant Secretary (sign.) Mesman

For copy conform
The General Secretary C. Visscher

## TRANSCRIPT

1834

1846/no.160 Gh.

Aan boord Z.M. kruis
praauw No.18 den 27 September
1834.

Ik Mohammet Sultan van Boeloengan N.O. kust van Borneo belove en zweere in de tegenwoordigheid van den WelEdelen Gestrengen heer Anthonij Anemaet, kapitein ter zee kommanderende Z.M. vaartuigen in de wateren van Makasser thans te Barrow, dat ik mij onderwerpe aan het Nederlandsche Gouvernement, en dat ik aan de door hetzelve gegevene of nog te gevene orders, met mijne onderhebbende steeds zal onderwerpen.

Belovende te zullen trachten de zeeroovers tegen te gaan en de handelaren te beschermen, en zoodra de gelegenheid het toelaat mij naar Macassar te begeven ten einde met het Gouvernement aldaar in nadere overeenkomst te treden en verdere bevelen te ontvangen.

Ten blijke der waarheid, heb ik deze met mijn handteekening bekrachtigd.

Bovenstaande eed in mijne handen afgelegd, en in mijne tegenwoordigheid onderteekend.

De kapitein ter zee voornoemd
( wgt) Anth. Anemaet

In margine staat- Dit is het merk van Mohammet Sultan Boeloengan, in onze tegenwoordigheid gesteld.

( wgt) C.L.Lemmiers, 2e Luitenant ter zee
( wgt) C.F. Otto, , 2e Lt.f adjudant
( wgt) Wolff, officier van gezondheid

-daar onder staat-
De Adjunct Secretaris ( wgt) Mesman

Voor Eensluidend afschrift
De Algemeen Secretaris C. Visscher

# Annex 9

# CAPITULATIONS OF PEACE, PROTECTION AND COMMERCE BETWEEN THE GOVERNMENT OF HER CATHOLIC MAJESTY AND THE SULTAN AND DATTOS OF SULU DATED 23 SEPTEMBER 1836

## (ENGLISH TRANSLATION)

## TRANSLATION

Capitulations of peace, protection and commerce between the Government of her Catholic Majesty and the Sultan and Dattos of Sulu, signed in this capital city on 23 September of 1836.

... Article 1:

The very illustrious Captain General and Governor, by appointment of Her Catholic Majesty, of the Philippine islands, gives assurances to the most excellent Sultan and Dattos of Sulu, during the present and forever more, of the most durable peace on behalf of the Spaniards and the locals of all the islands subject to the Spanish Crown with the dependants of the territories subject to the Sultan and Dattos: the Captain offers the protection of his Gpvernment and the service of the navy and the army for any wars which the Sultan may need to engage in against enemies that attack him, or in order to submit those peoples who rebel against him throughout the whole extent of the islands which lie within the limits of Spanish right and, which stretch from the western extremity of Mindanao to Borney and La Paragua, with exception of Sandacan and the other territories tributary to the Sultan on the mainland of Borney.

The Sultan of Borney for his part, accepts the friendship and protection of the Spanish Government and undertakes to maintain the peace with all vassals of Her Catholic Majesty, and also undertakes to consider as enemies those who from this time on are enemies of the Spanish nation, joining in armed attack in any such wars which occur, as though the Sulu people were themselves Spanish, and in any such event, Her Catholic Majesty undertakes responsibility for the sustenance of the Sulu people, just as she does for the other soldiers and civilians in Spain's army and navy. The meaning of clause 2 of the capitulations of 1737 is renewed and clarified, in that the Sultan of Sulu's people are under no obligation to provide assistance during wars with European nations...

## Annex 10

## RESOLUTION OF THE GOVERNOR-GENERAL OF NETHERLANDS INDIA REGARDING THE DUTCH POSSESSIONS IN BORNEO
## DATED 28 FEBRUARY 1846
## (ENGLISH TRANSLATION AND DUTCH VERSION)

### Inclosure 3 in No. 2.

***Resolution of the Governor-General of Netherlands India regarding the Dutch Possessions in Borneo, dated Buitenzorg-Batavia, February 28, 1846.***

CONSIDERING that the exertions employed for more than twenty-five years, to raise the native population of Borneo from the neglected state in which they live, and effectually suppress piracies, have not proved sufficiently successful, chiefly from want of combination, and because these exertions have been more determinately limited to the coast, where the Netherlands functionaries reside, and where their endeavours are often impeded by opposing interests.

Taking into consideration that, to stimulate industry and to extend civilization, the removal of impediments to trade and the establishment of free ports have already been tried without success; and that in consequence of this it has been deemed advisable by maintaining, and, if required, enlarging these liberal regulations, to unite the now existing but separated and independently acting Netherlands authorities into one systematic co-operation through means of a central Government, which, once established in the interior, shall be able to put itself in immediate connection with the natives of the country, whose protection, moral and religious civilization, will be the aim of the proposed measures.

Considering that the Mission sent lately to Borneo has diffused more light regarding the system of Government, industry, and commerce, by which the resources which this island offers may be brought to be more and more serviceable to the general interest.

Considering that the general knowledge of the geographical and political concerns of Borneo, obtained by means of the said Mission, affords the means of defining the territorial division of the island, which will prevent any uncertainty concerning the judicial territory to which the inhabitants of Borneo belong, and which will also serve as a rule for the Tribunals and authorities, without, however, intending to diminish or restrict in any way, by this description of frontiers, the pretensions which the Netherlands may be able to establish to any lands or districts lying without those mentioned below.

The Council of India having heard,

Has found good and determined :—

1. To order that the present independent divisions, over which Dutch authorities are placed on the south and east coast, also on the west coast of Borneo, with all their internal and other dependencies, shall henceforward be included in one general Government of Borneo and its dependencies.

2. To nominate as Governor of Borneo A. L. Weddik, now Inspecting Commissioner of that island and of Rhio and Linga, with the intention that he shall establish himself at a central place in the interior, to be afterwards fixed, and that his sphere of operations will be determined by instructions to be further settled.

To write to the functionaries now exercising authority in Borneo to remain in exercise of their authority on the present footing over the interior and coasts falling under their division till further orders shall have been given, with the understanding that they will follow and obey the orders of the Governor of Borneo now appointed.

3. To order that the following territorial division and description of the districts of Borneo, which are subjected to the Netherlands sovereignty, shall serve as a guide for the measures of the Dutch authorities established on that island.

(1.) The west coast of Borneo consists of the Assistant Residencies of Sámbás and Pontiánák.

(*a.*) The division of Sámbás contains the coast territories from Tánjong Dátu to the mouth of the Sungie Durie.

Under it are the following islands, viz. :—

Pulo Báhru, Pulo Lombukután, Pulo Penátáh Besár and Ketjil, Pulo Kábong, Pulo Sáluwár, Pulo Lándiás, Pulo Piká, Pulo Pontiánák ; and Pulo Kámbáng, Pulo Tuwáh, and Pulo Gáding, near Palo.

Further in the interior, from the top of the Pángie Mountains, being the high country of Tánjong Dátu, over the tops of the chain of mountains Kuwái and the mountains Djángui, Rájá, and Gubáng to the mountain Bájáng, also called Krimbáng, Bárátjeh, and Sunjáng.

Further, from the hill Bájáng to the Sebáhu, and in the mountain Pándán, to the Sebakkál and the Sempuru, and from Pándján, along the left bank of the Sungei Durie to the sea.

Under the Government of Sámbás belongs only the territory of that name.

(*b.*) The division of Pontiánák contains the coast territory from the mouth of the Sungei Durie, towards the south, to the hill Penámpungáng (on the south coast) and from thence right to the sea, which hill forms the frontier, between Mátám, and Kutto-wáringin. Under it belong the following islands, viz. :—

Pulo Setienjáng, Dámer, Penembungon, Temádju, Dátu, Kumbáng, Máláng Márákiet, Nánás, Antu, Mássá-tiega, Kárimátá, Togong, Perángien, Togong, Kráwáng, Semur, Umáh, Aijer, Ubáng, Páppán (four islands), Málúdáng (three islands), Mentiegie, Láják Besár and Ketjil, Pándán Besár and Ketjil, Lessing, Grissek, Bántángur, Genting, Bessie, Burong (two islands), Auwer (two islands), Aroh, láut and dárát, Serutu, Bilián, Bussong, Gunung, Genteng, Sorong-Gáding, Bulu (two islands), Bulát, Kebájáng, Kerrá, Lintáng, Bákkou besár and ketjil, Kárimátá tuwáh, Buwán, Nibon, Sokot, Uloi, Melápies (four islands), Buleh, Genting, Sirih, Penámbángán, Trussán Hádjie, Lemán (four islands), Pelintuán, Sálánámá, Dátu, Djoántá Kátung, Penjám, Nibung, Láláng, Agun Pisáng, Sámbádien, láut and dárát, Tjámpedák, láut and dárat, Tjibeh, Tjambedák south, Lánggier, Pánánggon, Tjukus, Tukáng mángkudán, Sáwie, Djámboh, Kutjing, Nánás, Lukutkerrá, Djerás, Langán, Báuwát, Geiláng, Penámbun, Mángkob, and Bátu titie.

Further the frontier with Sámbás, as above-mentioned, from the mouth of the Sungei Durie to the mountain Báyáng.

Further on, the frontier of the subject and allied States along the Kápuás with the Brunái Kingdom, with some exceptions to be afterwards shown, and under reservation of the high Government right of the State to parts not occupied, is provisionally considered to go, from the mountain Báyáng over the tops of the mountains from which, in the north, rise the rivers which pour themselves out on the Brunái coast, and from which at the same time the rivers rise which fall into the Kápuás.

Further, over the chain of mountains Bátu Lupárt, and over the mountains from which the left branch of Kápuás, and the waters flowing into it, rise ; further, in an east and north-east direction to the high water-dividing central mountains which form the interior frontier of Berou, where it is cut by the parallel of 3° 20′ north latitude.

The realm of Pontiánák, with the exception of detailed directions afterwards to be given, is further limited by the mountains which form the interior frontier of Berou ; and on the south, by the chain of mountains, Angá Angá, where it unites itself with the chain known under the name of Keminting (Mádái or Punám), from which chain, on the north, the waters originate which pour themselves out in the Kápuás, and, on the south, those waters which discharge themselves on the south coast of Borneo; afterwards over the before-named chain of mountains going in the direction of south, west, and west-south-west to the mountain Páháringán bádákh, towards the mountain Bátu Hádjie, the Penámpungán, and from thence to the coast in a straight line.

Under the realm of Pontiánák are included the districts :—

Pontiánák, Mámpáwá, Lándákh, Kubu, Simpáng, Sukádáná, Mátám, Táján, Meliouw, Sángouw, Sekádouw, Sintáng, Meláwie, Sepápu, Blitáng, Silát, Sálimbâuw, Piássá, Jongkong, Bunut, Mâlor, Támán, Ketán, Punán, and a number of nomad races of Dáyáks, who reside in the above-described territory.

Among the realms or districts here above-mentioned, Sámbás, Mámpáwá, Pontiánák, Lándák, Kubu, Simpáng, Sukádáná, and Mátám belong directly to the Netherlands; the remaining ones belong to it indirectly.

(2.) Until the organization of the east coast shall have taken place, the States and countries situated in it will remain combined with the south coast, and this division will contain the south and east coast, which also consists of the coast territories from the west of the River Kutto-wáringin (as fixed above by Potiánák), east, north-east, and northwards to the Kampong Atas, making the frontier of the realm Bulángán to Berou, with the country of Tidun; and situated nearly in 3° 20′ north latitude.

The following islands belong to it, viz.:—

Pulo Dámár, Pulo Dátu, Pulo Láut and dependencies, Pulo Láut little, the Moressen, the Dwaalder, the Pulo Nángká, and the islands on the coast, the Meáng, the Mútáká, Pulo Biláng bilángán, Pulo Báli kukup, Pulo Mániburá, Pulo Pánjáng, Pulo Deráwán, Pulo Robá, Pulo Sámámá, Pulo Tábá, Pulo Kúkábáng, and Pulo Márátuwá.

In the interior, as shown in the division Pontiánák, from the union of the chain of mountains Angá Angá and Keminting to the west and west by south-west to the frontier of the State Kutto-wáringin.

In this territory is situated the realm of Bánjármassin, an independent State, a very near ally and subjected to the Netherlands jurisdiction as far as concerns foreign Asiatics and Europeans; its frontiers are as follows :—

Along the northern bank of the Kwin, crossing the River Mártápura, along the Sungei Mesá, the source of the Sungei, Báhru, and Lumbákh; from thence along Támbák Linik towards Liáng-ángán, and along the right bank of the Mertuá, to the mountain Pemáton, over the tops of the chain of mountains separating the waters towards the mountain Lángopán, and from thence towards the Luáng (all belonging to the chain of mountains Merátus) from the Luáng along the source of the Sungeis Sentálán, Ajun, and Najun, and the Sungeis Náppo, Sibáng and Pákkon, to the place called Nánjon, and from there to over against the Kwállá Mengkátip.

From over against the kwállá Mengkátip along the eastern bank of the river of Banjármassin to the Tjernju on the Kwin, and progressively along the northern bank of the Kwin as is above mentioned.

Under the division of the south and east coast are comprehended the States of—

Berou, consisting of Bulongán, Gunong tebur and Tánjong, Kutei, Passir; Tánáh bumbu, to which belong—Báugkáláán, Tjingál, Menungul, Tjántong, Sámpánáhán, Punter láut, Bátu litjin, Kussán, Pátágán and Sámbánbán; Mendávie, Sámpit, Pembuang and Kutto-waringin.

The division of the south and east coast contains Government districts :—

Tánáh Láut, Dussun ulu and ilier, Bekompei, Pulo Peták (Little Dáják), Káhájáng (Great Dáják), and Kápuás.

And all the territories dependencies of these, also inhabited by different races of Dáyáks, of which a more detailed description will afterwards be given.

Among the States named above the following belong directly to the Netherlands :—

Berou, Tánah bumbu, Tánáh láut, the Dussuns, the Great and Little Dájáks and Kápuás, Mendáwei, Sámpit, Pembung and Kutto-waringin.

The remaining ones belong indirectly to the Netherlands rule.

(4.) All the authorities and functionaries in Borneo are ordered, under their responsibility, to be careful that the Supreme Government's rights of the State in the lands and districts, within the circumference herein stated, shall be honoured, and that the records, contracts, and Treaties, upon which these rights are based, attended to, and followed.

# EXTRACT uit het Register der Besluiten van den Minister van Staat, Gouverneur Generaal van Nederlandsch Indië.

BUITENZORG, *den 28sten Februarij 1846.*

## DE MINISTER VAN STAAT, GOUVERNEUR GENERAAL VAN NEDERLANDSCH INDIE.

Overwegende, dat de pogingen sedert meer dan *vijf-en-twintig* jaren aangewend, om de inlandsche Bevolking uit *Borneo* te verheffen uit den verachterden toestand waarin dezelve leeft en om de zeerooverijen op eene afdoende wijze te weren, niet genoegzaam aan het doel hebben beantwoord, hoofdzakelijk door gebrek aan éénheid, en omdat die pogingen zich meer bepaaldelijk beperkten tot het kustland, alwaar de Nederlandsche ambtenaren hun verblijf houden en alwaar hunne bemoeijingen, vaak, door tegenstrijdige belangen worden belemmerd.

In aanmerking nemende, dat reeds tot aanwakkering van nijverheid en tot verspreiding van beschaving, vruchteloos beproefd is, het opheffen van handels-belemmeringen en het daarstellen van vrijhavens, en dat het daarom geraden is geoordeeld, om, met handhaving en, des noods, uitbreiding van die vrijzinnige bepalingen, de aanwezige en op zich zelven staande Nederlandsche autoriteiten, tot eene stelselmatige zamenwerking te vereenigen, door middel van een centraal Beheer, dat eenmaal in het binnenland gevestigd, zich zal kunnen stellen in onmiddelijke aanraking met de inboorlingen des lands, wier bescherming, zedelijke en godsdienstige beschaving het doel der beraamde maatregelen is.

Overwegende, dat de onlangs naar *Borneo* gerigte zending meerder licht heeft verspreid over eene ontwikkeling van bestuur, industrie en handel, om aldus de hulpbronnen, welke dat eiland aanbiedt, meer en meer dienstig te doen worden voor het algemeen belang.

Overwegende, dat de ten gevolge dier zending verkregen algemeene kennis der aardrijks- en staatkundige aangelegenheden van *Borneo*, de gelegenheid daarstelt, om al dadelijk de omschrijving van eene territoriale indeeling des eilands vast te stellen, bepaaldelijk ook, ter voorkoming van onzekerheid ten aanzien van het Regtsgebied, waaronder de ingezetenen van *Borneo* behooren, en dewelke tot rigtsnoer zal strekken voor de betrokken regtbanken en gezagvoerderen, zonder dat van de aanspraak welke *Nederland* op eenige buiten de hieronder te noemen landen en districten, mogt willen doen gelden, door die omschrijving of grensbepaling, in het minst, wordt verzwakt, of daaraan gederogeerd.

De Raad van Indië gehoord;

Heeft goedgevonden en verstaan:

*Eerstelijk:* Te bepalen dat de thans op zich zelven staande afdeelingen, waarover Nederlandsche autoriteiten gevestigd zijn, ter Zuid- en Oostkust, alsmede ter Westkust van *Borneo*, met al derzelver binnenlandsche en andere onderhoorigheden, voortaan zullen zijn begrepen, onder een gezamenlijk Gouvernement over *Borneo* en *Onderhoorigheden*.

*Ten tweede:* Te benoemen tot Gouverneur van *Borneo* A. L. WEDDIK, thans Kommissaris Inspecteur voor dat eiland, mitsgaders voor *Riouw* en *Lingga*, onder bepaling, dat hij zich zal vestigen op een nader te bepalen centraal punt in de binnenlanden en zijnen werkkring zal voeren, overeenkomstig eene nader te arresteren instructie.

Met aanschrijving op de thans bestaande gezagvoerende ambtenaren op *Borneo*, om tot deswege nader bevelen zullen worden uitgevaardigd, het bestuur te blijven voeren over de binnen- en kustlanden onder derzelver afdeelingen ressorterende, op den voet, zoo als tot nog toe, is voorgeschreven, onder de mits echter, dat zij zullen opvolgen en gehoorzamen, de bevelen van den benoemd Gouverneur van *Borneo*.

*Ten derde:* Te bepalen, dat de volgende territoriale onderdeeling en omschrijving der afdeelingen van *Borneo*, welke aan de Nederlandsche Souvereiniteit onderworpen zijn, zal strekken tot rigtsnoer bij de handelingen der Nederlandsche autoriteiten, op dat eiland gevestigd.

1°. De westkust van *Borneo* bestaat uit de Assistent Residentien *Sambas* en *Pontianak*.

*a.* De afdeeling *Sambas* bevat het kustgebied van af *Tanjong Datoe* tot aan de monding der *Soengei Doerie*. Daaronder ressorteren de volgende eilanden, als:

Poeloe *Bahroe*,
» *Lemboekoetan*,
» *Penatah besar* en *ketjil*,
» *Kabong*,
» *Saloewar*,
» *Landias*,
» *Pika*,
» *Pontianak*,
» *Kambung*, } bij *Palo*.
» *Toewah* } bij *Palo*.
en » *Gading* } bij *Palo*.

Voorts binnenlands, van den top des bergs *Pangie*, zijnde het hooge land van *Tanjong Datoe*, over de toppen van het gebergte *Koewai* en de bergen *Djangoei*, *Roja* en *Goebang*, tot aan den berg *Bujung*, ook genaamd *Krimbang*, *Baratjek* en *Soenjang*.

Voorts van den berg *Bajang* naar den *Sebakoe*, en naar den berg *Pandan*, naar den *Sebakkal* en den *Sempoeroe*, en vervolgens van *Pawedjan*, langs den linker oever der *Soengei Doerie* tot aan zee.

Onder het gebied van *Sambas* behoort enkel het rijk van dien naam.

*b*. De afdeeling *Pontianak* bevat het kustgebied van af de monding der *Soengei Doerie*, om de zuid, tot aan den berg *Penampoengang* (op de zuidkust) en van daar regt naar zee, welke berg de grens uitmaakt, tusschen *Matam* en *Kottawaringin*. Daaronder ressorteren de volgende eilanden, als:

*Poeloe Setienjang*, *Damer*, *Penemboengon*, *Temadjoe*, *Datoe*, *Koembang*, *Malang Merakiet*, *Nanas*, *Antoe*, *Massu tiega*, *Karimata*, *Togong Perangien*, *Togong Krawang*, *Semoer*, *Oemoh*, *Aijer*, *Oebang*, *Pappan* (vier eilanden) *Maladang*, (drie eilanden) *Mentiegie*, *Lajak*, *bezar* en *Ketjil*, *Pandan besar* en *Ketjil*, *Lessing*, *Grissek*, *Bantangoer*, *Genting*, *Bessie*, *Boerong* (twee eilanden), *Awarr*, (twee eilanden), *Aroklant* en *darat*, *Seroetoe*, *Bilian*, *Boessong*, *Goenoeng*, *Genteng*, *Sorong gading*, *Boeloe* (twee eilanden), *Boelat Kebajang*, *Kerra*, *Lintang*, *Bakkou besar* en *ketjil*, *Karimata toewah*, *Boewon*, *Nibon*, *Sekot Oeloi*, *Melapies* (vier eilanden), *Boeleh*, *Genting*, *Sirih*, *Panambangan*, *Troessan Hadjie*, *Leman* (vier eilanden), *Pelintoean*, *Salanama*, *Datoe*, *Djoaata*, *Kaloeng*, *Penjam*, *Niboeng*, *Lalang*, *Agoen Pisang*, *Sambadien laut* en *darat*, *Tjampedak laut en darat*, *Tjibek*, *Tjambedak-zuid*, *Langgier*, *Punanggon*, *Tjoekoes*, *Toekang mangkoedan*, *Sawie*, *Djamboh*, *Koetjing*, *Nanas*, *Loekoetkerra*. *Djerus*, *Langan*, *Bawaut*, *Geilang*, *Penamboen*, *Mangkok* en *Batoe titie*.

Voorts de grens met *Sambas*, zoo als hierboven is vermeld, van af de monding der *Soengei Doerie* tot aan den berg *Baijang*.

Vervolgens wordt de grens van de leenroerige en verbonden staten langs den *Kapoeas* met het Broenaische Rijk, behoudens nader aantewijzen bijzonderheden, met voorbehoud der Hooge overheids regten van den Staat, op de niet bezette gedeelten, voorloopig, gerekend te gaan, van af den berg *Baijang*, over de toppen der bergen waaruit, om de noord, afvloeijen de rivieren die zich aan de Broenaische kust uitstorten en waaruit tevens de rivieren ontspringen, welke in de *Kapoeas* vallen;

Voorts over het gebergte *Batoe Loepar* en over de gebergten, waaruit de linker tak van de *Kapoeas* en de in haar uitvloeijende wateren ontspringen, verder Oost en noordoost waarts op, tot aan het hooge waterscheidende kerngebergte, dat de binnenlandsche grens van *Berou* uitmaakt, daar, waar hetzelve door den parallel van 3°20′ Noorder breedte wordt gesneden.

Verder wordt het gebied van *Pontianak* behoudens nadere omstandige aantooning bepaald door de gebergten, welke de binnenlandsche grens van *Berou* daarstellen, en vervolgens om de zuid, door het gebergte *Anga anga*, dáár, waar hetzelve zich vereenigt met de keten, bekend onder den naam van *Keminting*, (*Madei of Pasum*) uit welke gebergten afvloeijen, om de noord, de wateren die zich in de *Kapoeas* uitstorten, en om de zuid, die, welke uitwatering vinden aan de zuidkust van *Borneo*, vervolgens over de zoo evengenoemde bergketen, gaande in de rigting van Zuid, west, en west zuidwest, tot aan den berg *Pabaringan badakh*, naar den berg *Batoe Hadjie*, den *Penampoengan* en van daar naar de kust, regtlijnig.

Onder het gebied van *Pontianak* ressorteren de districten;

*Pontianak*, *Mampawa*, *Landakh*; *Koeboe*, *Simpang*, *Soekadana*, *Matam*, *Tajan*, *Meliouw*, *Sangouw*, *Sekadouw*, *Sintang*, *Melawie*, *Sepapoe*, *Blitang*, *Silat*, *Salimbauw*, *Piasen*, *Jongkong*, *Boenoet*, *Malor*, *Taman*, *Kelan*, *Poenan* en een aantal nomadische stammen van Dajaks, welke binnen het omschreven grondgebied woonachtig zijn.

Onder de rijken of districten hierbovengenoemd ressorteren immediaat, onder *Nederland*, die van *Sambas*, *Mampawa*, [illegible]*ontianak*, *Landak*, *Koeboe*, *Simpang*, *Soekadana* en *Matam*; terwijl de overigen med[illegible] daartoe behooren.

2°. Tot dat de organisatie der Oostkust zal hebben plaats gehad, blijven de Rijken en Landen aan dezelve gelegen, vereenigd met de Zuidkust en bevat deze afdeeling, de afdeeling Zuid en Oostkust, welke aldus besluit, het kustgebied van af bewesten de rivier van *Kottawaringin* (zoo als boven bij *Pontianak* bepaald) oost, noordoost en noordwaarts op, tot aan de kampong *Atas*, makende de grens uit van het onder *Berou* ressorterend Rijk *Boelongan* met de Tidoengsche landen, en gelegen op ongeveer 3°20′ Noorder breedte.

Daaronder ressorteren de volgende eilanden als:

Poeloe *Damar*,
» *Datoe*,
» *Laut* en onderhoorigheden
» *Laut* klein
de *Moressen*
de *Dwaalder*
Poeloe *Nangka* en de eilanden aan de kust
» *Meang*,
» *Mataka*,
» *Bilang bilangan*,
» *Bali koekoep*,
» *Maniboera*,
» *Panjang*,
» *Derawan*.
» *Roba*,

Poeloe *Samama*,
» *Taba*,
» *Kakabang*, en
» *Maraloewa*.

Voorts binnenlands zoo als bij de afdeeling *Pontianak* is aangeduid, van af de vereeniging van de gebergten *Anga anga* en *Keminting* naar de west en westzuidwest tot aan de opgegeven grens van het rijk van *Kottawaringin*.

Binnen dit grondgebied is gelegen het Rijk van *Banjermassin*, als een afhankelijke staat, zeer nauwe bondgenoot en wat de vreemde oosterlingen en europeanen aangaat, aan de Nederlandsche regtspleging onderworpen, hetwelk begrensd is, als volgt:

Langs den noorder oever der *Kween*, dwars over de rivier van *Martapoera*, voor langs de *Soengei Mesa*, langs de oorsprong der *Soengei bahroe* en *Loembakh* van daar, over *Tambak Liniek* naar *Liang-angau*, en langs den regter oever der *Mertoea*, tot aan den berg *Pematen*, over de toppen van het waterscheidend gebergte, naar den berg *Langepan* en van daar naar de *Loeäng* (een en ander behoorende tot het gebergte *Meratoes*) van den *Loeäng* langs de bronnen van de Soengeis *Sentalan*, *Ajeen* en *Najoen* en de Soengeis *Nappo*, *Sibang* en *Pakkon* tot aan de plaats genaamd *Nanjon* en van daar, naar tegenover de *Kwalla Mengkatip*.

Van tegenover de *Kwalla Mengkatip* langs den ooster oever der rivier van *Banjermassin* tot aan de *Tjeroetjoe* aan de *Kween* en voorts langs den noorder oever van de *Kween* zelve, als hiervoren gezegd.

Onder het gebied van de afdeeling zuid en oostkust ressorteren de Rijken
*Beroa*, bestaande uit *Boelongan*, *Goenong*
*teboer* en *Tandjong*,
*Koetei*
*Passir*
*Tanah boemboe* waartoe behooren
*Bangkalaän*,
*Tjingal*,
*Menoengoel*,
*Tjantong*,
*Sampanahan*,
*Poentoer laut*,
*Batoe litjin*,
*Koesan*,
*Pagattan*, en
*Sambanban*.
*Mendawie*,
*Sampit*,
*Pemboeang* en
*Kottawaringin*,

Het gebied der Zuid en Oostkust bevat overigens de Gouvernements distrikten:
*Tanah Laut*,
*Doessoen*, *oeloe* en *illier*,
*Bekompei*,
*Poeloe Peitak* (kleine Dajak)
*Kahajang* (groote » ) en
*Kapoeas*
en alle de daaronder ressorterende landen, ook bewoond door verschillende dajaksche stammen waarvan nader het meer omstandige wordt aangewezen.

Onder de Rijken hierbovengenoemd ressorteren immediaat onder *Nederland*:
*Beroa*,
*Tanah boemboe*,
*Tanah laut*,
*de Doessons*,
de *groote* en *kleine Dajak* en *Kapoeas*,
*Mendawei*,
*Sampit*,
*Pemboeng*, en
*Kottawaringin*
terwijl de overige als mediaat tot het Nederlandsch gezag behooren.

*Ten vierde:* Alle autoriteiten en ambtenaren op *Borneo* gevestigd te gelasten, om op ne verantwoordelijkheid te zorgen, dat de Hooge Overheids regten van den Staat op de den en distrikten, binnen de hierin bepaalde omvang, worden geëerbiedigd, en dat de tonden, kontrakten en overeenkomsten, waarop die regten gegrond zijn, dienaangaande, den in acht genomen en nagekomen.

# Annex 11

## TREATY OF FRIENDSHIP AND COMMERCE BETWEEN HER MAJESTY AND THE SULTAN OF BORNEO DATED 27 MAY 1847

## Appendix No. 4.

*Treaty of Friendship and Commerce between Her Majesty and the Sultan of Borneo.—Signed, in the English and Malay Languages, May 27, 1847.*

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, being desirous to encourage commerce between Her Majesty's subjects and the subjects of the independent Princes of the Eastern Seas, and to put an end to piracies which have hitherto obstructed that commerce; and His Highness Omar Ali Saifadeen, who sits upon the throne and rules the territories of Borneo, being animated by corresponding dispositions, and being desirous to co-operate in any measures which may be necessary for the attainment of the above-mentioned objects, Her said Britannic Majesty and the Sultan of Borneo have agreed to record their determination in these respects by a Convention containing the following Articles:—

### ARTICLE I.

Peace, friendship, and good understanding shall from henceforward and for ever subsist between Her Majesty the Queen of Great Britain and Ireland and His Highness Omar Ali Saifadeen, Sultan of Borneo, and between their respective heirs and successors, and subjects.

### ARTICLE II.

The subjects of Her Britannic Majesty shall have full liberty to enter into, reside in, trade with, and pass with their merchandize through all parts of the dominions of His Highness the Sultan of Borneo, and they shall enjoy therein all the privileges and advantages with respect to commerce, or otherwise, which are now or which may hereafter be granted to the subjects or citizens of the most favoured nation; and the subjects of His Highness the Sultan of Borneo shall in like manner be at liberty to enter into, reside in, trade with, and pass with their merchandize through all parts of Her Britannic Majesty's dominions in Europe and Asia as freely as the subjects of the most favoured nation, and they shall enjoy in those dominions all the privileges and advantages with respect to commerce or otherwise, which are now or which may hereafter be granted therein to the subjects or citizens of the most favoured nation.

## ARTICLE III.

British subjects shall be permitted to purchase, rent, or occupy, or in any other legal way to acquire, all kinds of property within the dominions of His Highness the Sultan of Borneo; and His Highness engages that such British subjects shall, as far as lies in his power within his dominions, enjoy full and complete protection and security for themselves and for any property which they may so acquire in future, or which they may have acquired already, before the date of the present Convention.

## ARTICLE IV.

No article whatever shall be prohibited from being imported into or exported from the territories of His Highness the Sultan of Borneo; but the trade between the dominions of Her Britannic Majesty and the dominions of His Highness shall be perfectly free, and shall be subject only to the custom duties which may hereafter be in force in regard to such trade.

## ARTICLE V.

No duty exceeding one dollar per registered ton shall be levied on British vessels entering the ports of His Highness the Sultan of Borneo, and this fixed duty of one dollar per ton to be levied on all British vessels shall be in lieu of all other charges or duties whatsoever. His Highness moreover engages that British trade and British goods shall be exempt from any internal duties, and also from any injurious regulations which may hereafter, from whatever causes, be adopted in the dominions of the Sultan of Borneo.

## ARTICLE VI.

His Highness the Sultan of Borneo agrees that no duty whatever shall be levied on the exportation from His Highness' dominions of any article the growth, produce, or manufacture of those dominions.

## ARTICLE VII.

His Highness the Sultan of Borneo engages to permit the ships of war of Her Britannic Majesty, and those of the East India Company, freely to enter into the ports, rivers, and creeks situated within his dominions, and to allow such ships to provide themselves, at a fair and moderate price, with such supplies, stores, and provisions as they may from time to time stand in need of.

## ARTICLE VIII.

If any vessel under the British flag should be wrecked on the coast of the dominions of His Highness the Sultan of Borneo, His Highness engages to give all the assistance in his power to recover for, and to deliver over to, the owners thereof, all the property which can be saved from such vessels. His Highness further engages to extend to the officers and crew, and to all other persons on board such wrecked vessel, full protection both as to their persons and as to their property.

## ARTICLE IX.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the Sultan of Borneo hereby engage to use every means in their power for the suppression of piracy within the seas, straits, and rivers subject to their respective control or influence, and His Highness the Sultan of Borneo engages not to grant either asylum or protection to any persons or vessels engaged in piratical pursuits; and in no case will he permit ships, slaves, or merchandize captured by pirates to be introduced into his dominions, or to be exposed therein for sale. And Her Britannic Majesty claims, and His Highness the Sultan of Borneo concedes to Her Majesty, the right of investing her officers and other duly-constituted authorities with the power of entering at all times with her vessels of war, or other vessels duly empowered, the ports, rivers, and creeks within the dominions of His Highness the Sultan of Borneo, in order to capture all vessels engaged in piracy or slave-dealing, and to seize and to reserve for the judgment of the proper authorities all persons offending against the two Contracting Powers in these respects.

## ARTICLE X.

It being desirable that British subjects should have some port where they may careen and refit their vessels, and where they may deposit such stores and merchandise as shall be necessary for the carrying on of their trade with the dominions of Borneo, His Highness the Sultan hereby confirms the cession already spontaneously made by him in 1845 of the Island of Labuan, situated on the north-west coast of Borneo, together with the adjacent islets of Kuraman, Little Rusakan, Great Rusakan, Da-at, and Malankasan, and all the straits, islets, and seas situated half-way between the fore-mentioned islets and the mainland of Borneo. Likewise the distance of 10 geographical miles from the Island of Labuan to the westward and northward, and from the nearest point half-way between the islet of Malankasan and the mainland of Borneo in a line running north till it intersects a line extended from west to east from a point 10 miles to the northward of the northern extremity of the Island of Labuan, to be possessed in perpetuity and in full sovereignty by Her Britannic Majesty and her successors; and in order to avoid occasions of difference which might otherwise arise, His Highness the Sultan engages not to make any similar cession, either of an island or of any Settlement on the mainland, in any part of his dominions, to any other nation, or to the subjects or citizens thereof, without the consent of Her Britannic Majesty.

## ARTICLE XI.

Her Britannic Majesty being greatly desirous of effecting the total abolition of the Trade in Slaves, His Highness the Sultan of Borneo, in compliance with Her Majesty's wish, engages to suppress all such traffic on the part of his subjects, and to prohibit all persons residing within his dominions, or subject to him, from countenancing or taking any share in such trade; and His Highness further consents that all subjects of His Highness who may be found to be engaged in the Slave Trade may, together with their vessels, be dealt with by the cruizers of Her Britannic Majesty as if such persons and their vessels had been engaged in a piratical undertaking.

## ARTICLE XII.

This Treaty shall be ratified, and the ratifications thereof shall be exchanged at Bruni within twelve months after this date.

This 27th day of May, 1847.

(L.S.) JAMES BROOKE. (The Seal of the Sultan.)

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## ADDITIONAL ARTICLE.

His Highness the Sultan of Borneo agrees that in all cases when a British subject shall be accused of any crime committed in any part of His Highness' dominions, the person so accused shall be exclusively tried and adjudged by the English Consul-General, or other officer duly appointed for that purpose by Her Britannic Majesty; and in all cases where disputes or differences shall arise between British subjects, or between British subjects and the subjects of His Highness, or between British subjects and the subjects of any other foreign Power within the dominions of the Sultan of Borneo, Her Britannic Majesty's Consul-General or other duly-appointed officer shall have power to hear and decide the same, without any interference, molestation, or hindrance on the part of any authority of Borneo, either before, during, or after the litigation.

This 27th day of May, 1847.

(L.S.) JAMES BROOKE. (The Seal of the Sultan.)

## Annex 12

# DECREE BY THE MINISTER OF STATE, GOVERNOR-GENERAL OF THE NETHERLANDS INDIES, OF 27 AUGUST 1849, NO. 8 (ENGLISH TRANSLATION AND DUTCH VERSION)

## STATUTEBOOK OF THE NETHERLANDS INDIES (1849)

(No. 40.) *Partition of the Island of* Borneo *in two divisions, under the name of* Western division *and* Southern- *and* Eastern division

*Decree by the Minister of State, Governor-General of the Netherlands Indies, of the 27th of August 1849, No. 8.*

Having read, Etc.

Has been approved and understood:

*Firstly:* To determine that the post of Governor of *Borneo and subordinate regions* will stay unoccupied, until in time the constitution of country and people will make possible and necessary a central establishment of that functionary on the island of *Borneo.*

*Secondly:* To determine that the Netherlands territory on the island of *Borneo* will be divided in two large sections, under the names of *Western division and South- and eastern division;*

They shall comprise:

*A. The western division:*

*Sambas,*
*Mampawa,*
*Pontianak,*
*Koeboe,*
*Simpang,*
*Soekadana,*
*Matam,*
*Landak,*
*Tajan,*
*Meliou,*
*Sangouw,*
*Sekadouw,*
*Blitang,*
*Sintang,*

and the entire basin of both branches of the *Kapoeas* up to their water-partings.

*B. The south-eastern division:*

*Kottawaringin,*
*Pemboeang,*
*Sampit,*
*Mendawe,*
the *greater* and *lesser Daijak-river,*
*Tanah Laut,*
*Tanah Boemboe,*
the *Doesson Illier* and *Oeloe,*
the realms of
*Passir,*
*Koetie,*
*Berou,*

together with the realm of *Banjermassin*, up to the water-parting with the basin of the *Kapoeas* and up to *Soengei atas* on the northeastern coast, including the whole basin of *Berou.*

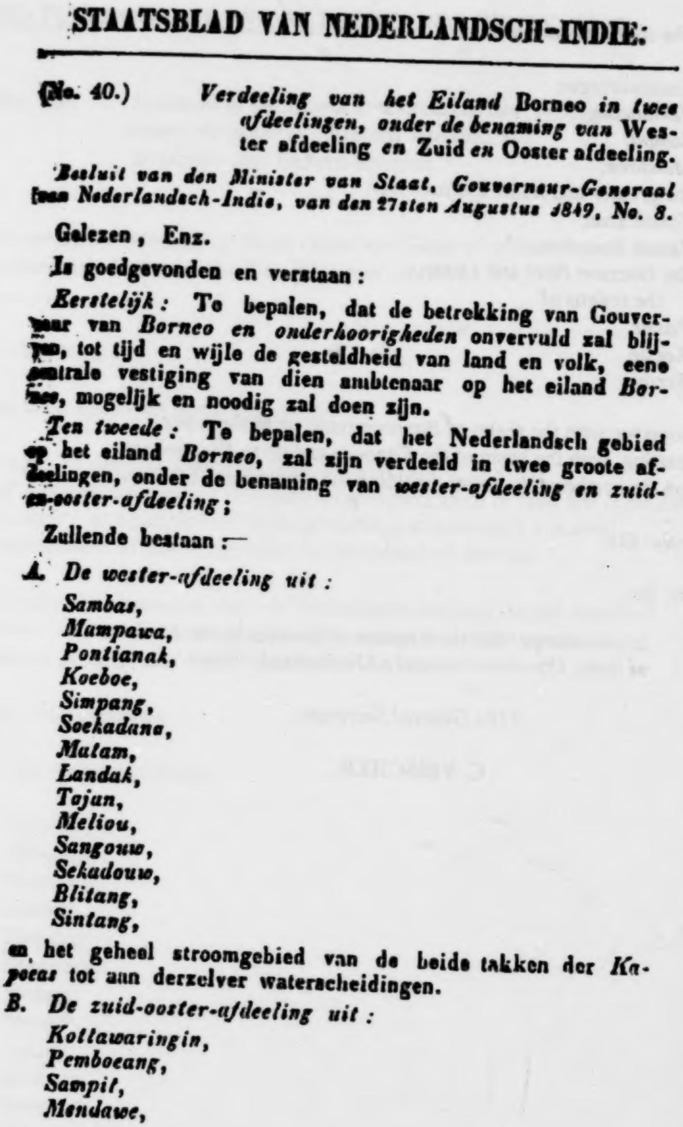
*Thirdly:* Etc.

Copy: Etc.

In accordance with the Register of Decrees by the Minister of State, Governor-General of Netherlands Indies.

*The General Secretary,*

**C. VISSCHER.**



# STAATSBLAD VAN NEDERLANDSCH-INDIE.

(No. 40.) *Verdeeling van het Eiland* Borneo *in twee afdeelingen, onder de benaming van* Wester afdeeling *en* Zuid *en* Ooster afdeeling.

*Besluit van den Minister van Staat, Gouverneur-Generaal van Nederlandsch-Indie, van den 27sten Augustus 1849, No. 8.*

Gelezen, Enz.

Is goedgevonden en verstaan:

*Eerstelijk:* Te bepalen, dat de betrekking van Gouverneur van *Borneo en onderhoorigheden* onvervuld zal blijven, tot tijd en wijle de gesteldheid van land en volk, eene centrale vestiging van dien ambtenaar op het eiland *Borneo*, mogelijk en noodig zal doen zijn.

*Ten tweede:* Te bepalen, dat het Nederlandsch gebied op het eiland *Borneo*, zal zijn verdeeld in twee groote afdeelingen, onder de benaming van *wester-afdeeling en zuid-en-ooster-afdeling*;

Zullende bestaan:—

A. *De wester-afdeeling uit:*

*Sambas,*
*Mampawa,*
*Pontianak,*
*Koeboe,*
*Simpang,*
*Soekadana,*
*Matam,*
*Landak,*
*Tajan,*
*Meliou,*
*Sangouw,*
*Sekadouw,*
*Blitang,*
*Sintang,*

en het geheel stroomgebied van de beide takken der *Kapoeas* tot aan derzelver waterscheidingen.

B. *De zuid-ooster-afdeeling uit:*

*Kottawaringin,*
*Pemboeang,*
*Sampit,*
*Mendawe,*

de *groote* en *kleine Daijak-rivier*,
*Tanah Laut*,
*Tanah Boemboe*,
de *Doesson Ilier* en *Oeloe*,
de rijken van
*Passir*,
*Koetie*,
*Berou*,

mitsgaders het rijk van *Banjermassin*, tot aan de waterscheiding met het stroomgebied van de *Kapoeas* en tot aan *Soengei atas* op de noordoostkust, met inbegrip van het geheel stroomgebied van *Berou*.

*Ten Derde* : Enz.

Afschrift : Enz.

Accordeert met het Register der Besluiten van den Minister van Staat, Gouverneur Generaal van Nederlandsch Indië.

*De Algemeene Secretaris*,
C. VISSCHER.

## Annex 13

# CONTRACT BETWEEN THE SULTAN OF BOELOENGAN AND THE GOVERNMENT OF NETHERLANDS EAST INDIES DATED 12 NOVEMBER 1850 (EXTRACT OF DUTCH VERSION AND ENGLISH TRANSLATION)

## TRANSCRIPT AND TRANSLATION

### Contract between the Sultan of Boeloengan and the Government of the Netherlands East Indies

### 12 November 1850

### Transcript of Art. 2

Het gebied van Boeloengan ligt binnen de volgende grenzen: met Goenoeng-Teboer: vanaf het zeestrand naar binnen 's lands, de rivier Karantiegan, van af hare monding tot aan haren oorsprong, voorts de Batoe-Boekkier en de berg Palpakh;

met de Solokhsche bezittingen aan zee de hoek genaamd Batoe Tinagat, en voorts de rivier Tauwau.

Tot Boeloengan zullen de volgende Eilanden behooren Terakkan,Nenoekkan en Sebittikh met toebehorende kleine Eilandjes.

Deze grensscheiding wordt als voorlopig aangenomen, en zal nader geheel worden nagegaan en op nieuw worden vastgesteld.

### Translation of Art. 2

The territory of Boeloengan is located within the following boundaries: with Goenoeng-Teboer: from the seashore landwards, the Karangtiegau River from its mouth up to its origin; in addition, the Batoe Beoekkier and Mount Palpakh;

with the Sulu possessions: at sea the cape named Batoe Tinagat, as well as the Tawau River.

The following islands shall belong to Boeloengan: Terakkan, Nenoekkan and Sebittikh, with the small islands belonging thereto.

This delimitation is established provisionally, and shall be completely examined and determined again.

## Annex 14

# DECREE OF THE GOVERNOR-GENERAL OF THE NETHERLANDS INDIES AMENDING THE TERRITORIAL SUBDIVISION OF THE RESIDENCY SOUTHERN AND EASTERN DIVISION OF BORNEO, DATED 2 FEBRUARY 1877

## (ENGLISH TRANSLATION)

## TRANSLATION

### Decree of the Governor-General of the Netherlands Indies amending the territorial subdivision of the residency Southern and Eastern Division of Borneo

2 February 1877

(............)

Art. 1. The residency *Southern and Eastern Division of Borneo* consists of *six* divisions, viz:
*Bandjermasin and surrounding areas,*
*Amoentai,*
*Martapopera,*
*Doeson and Dajak countries,*
*Sampit* and
*Koetei and the East coast of Borneo.*

(............)

Art. 3.
(............)

The division of *Koetei and the East coast of Borneo* consists of the feudal states of *Boeloengan* (to which belong the *Tidoeng countries* and the islands of Terrakan, Nenoekan and Sebittikh with the smaller islands belonging thereto), *Goenoeng Taboer* (............).

## Annex 15

## PROTOCOL BETWEEN SPAIN, GERMANY AND GREAT BRITAIN DATED 11 MARCH 1877 (ENGLISH TRANSLATION)

## TRANSLATION

**Protocol between Spain, Germany and Great Britain, signed as a single French text in Madrid on 11 March 1877**

**The undersigned:**

**His Excellency Mr. Manuel Silvela, Minister of State of His Majesty the King of Spain.**

**The Honourable Austen Henry Layard, Special Envoy and plenipotentiary Minister of Her Britannic Majesty; Count de Hatzfeldt, Special Envoy and plenipotentiary Minister of His Majesty the Emperor of Germany, charged by their respective Governments to put an end to the difficulties that have been occurring in the Joló (Sulú) seas and to thereby reach a definitive agreement on freedom of commerce in these seas …**

### I

**The commerce and navigation of the vessels of the subjects of Great Britain, Germany and the other powers are declared to be and will be absolutely free in the Archipelago of Sulu (Joló) and in all parts thereto, including rights to fish, without prejudice to the recognised rights of Spain in this protocol, in accordance with the following declarations:**

## Annex 16

## DESPATCH FROM ACTING CONSUL-GENERAL TREACHER TO THE EARL OF DERBY, WITH INCLOSURE, DATED 2 JANUARY 1878

## No. 131.

*Acting Consul-General Treacher to the Earl of Derby.—(Received February 15.)*

(No. 1. Consular. Confidential.)

My Lord, *Labuan, January 2, 1878.*

I HAVE the honour to report, that on the 16th December there arrived at Labuan the British steamer "America," of 600 tons burthen, from Singapore. This vessel is chartered by or for the use of Baron Gustavus de Overbeck, an Austrian, and Consul-General (unpaid) for Austria-Hungary at Hong-kong, where he has been long resident as a merchant, having previously, I am informed, been manager in the house of Dent and Co., of Shanghae.

The Baron is accompanied by an Englishman named William Pretyman, as secretary; by Mr. Pryer, also an Englishman, ostensibly as a naturalist, but it is more probable that he is engaged on account of his knowledge of the articles of trade in this portion of Borneo, he having originally, I believe, been in a mercantile house in Shanghae, and having travelled throughout the Philippines; and by Simpson, late a gunner in the British Royal Navy.

The Baron de Overbeck and his staff arrived at Singapore from England by mail steamer, and there joined the "America" which had been specially fitted up for their accommodation, and is armed with cannon and a Gatling gun. She has also a large supply of coal on board, and merchandize suitable for this part of the world, and presents of various kinds for native Princes and Chiefs.

At Singapore, where the greatest secrecy was observed as to the object of the expedition, the party was joined by Mr. Torrey, an American subject, now United States' paid Vice-Consul at Bangkok, Siam, and formerly a trader at Hong-kong, who was the President of the American Trading Company (the history of which has been reported to your Lordship*), and in whom, as President, were vested all the rights, &c., conceded to [illegible] of the Sultan and Rajah of Brunei with the power of disposing of them to other parties.

So far as I can learn, there were originally four Americans interested in the Company, viz., Mr. Moses, United States' Consul for Borneo, the original grantee; a Mr. Harris, Mr. Torrey, and another whose name I have not been able to obtain, and whose interest in it, I believe, was small.

Mr. Moses was a man of scarcely reputable character, and possessed of no capital, and obtained the grants simply for the purpose of selling them to others more fortunate in this respect than himself. He was, however, only able to obtain the assistance of Mr. Torrey, with a very limited capital, and a Company was started at Hong-kong, which included several Chinese; but, owing to the mismanagement of the Settlement which they established at Kimanis, the Company was wound up. Mr. Torrey subsequently proceeded to America with a view of raising a Company there, but met with no encouragement from the United States' Government or the mercantile world. He was informed by the former that it was not the policy of the American Government to encourage its citizens to spend their capital in distant countries while the resources of so large a portion of the United States remains undeveloped. But the proposal to establish a naval station at Banguey, an island included in the grants, was entertained for a short time.

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* To Foreign Office, No. 14, of August 17, 1872, and Consular No. 12, July 6, 1875.

Of the original lessees, Mr. Moses is said to have lost his life by the foundering of the vessel in which he had taken a passage to America, and Mr. Harris died at Kimanis, the Company's abortive Settlement. Mr. Torrey consequently claims the right of disposing as he likes of the concession he holds.

Baron de Overbeck, who, your Lordship may remember, accompanied Mr. Torrey on his visit to Brunei in 1875, on arriving at Labuan waited upon me at Government House, and briefly informed me that it was his intention to acquire all Mr. Torrey's concessions for the sum of 15,000*l*., minus the expenses of the present expedition, which is undertaken for the purpose of formally transferring the said concessions; and that he was acting in conjunction with Mr. Alfred Dent, a member of the well-known British firm of Dent and Co., who, indeed, had the principal interest in the scheme; that the object proposed was to "buy out" the American interest, and form a British Company somewhat, though on a much smaller scale, after the manner of the late East Indian Company, the main desire being to develop the agricultural resources of the northern portion of Borneo, which, as your Lordship is aware, is considered to be the most fertile part of the island, and well adapted for the cultivation of sugar, pepper, gambier, and coffee, its hills affording at different altitudes the various degrees of temperature requisite.

I informed Baron de Overbeck that, so far as my sentiments went, there was nothing I more earnestly desired than that the resources of this portion of Borneo should be developed by a *bonâ fide* British Company, although I foresaw that, in all probability, the trade and future prosperity of this little Colony might be seriously interfered with thereby, but that I, for my own part, considered that, provided the interests of the proposed Company were British, the welfare of a small Colony, which after twenty or thirty years' struggling has been able to do but very little towards opening out and civilizing Borneo, should not be put in opposition to a British Company, with means to effect the object in which Labuan has hitherto failed.

When I casually suggested to the Baron that it was possible that the concessions held by Mr. Torrey had lapsed both from time, they having been made for ten years only, and also because no payments had been made by the grantee, he pointed out that the concessions were renewable at the end of ten years, though no conditions of renewal are mentioned, and that no fixed time is appointed for the payment of the rental, and that consequently Mr. Torrey had grounds to go upon in claiming that the concessions he possessed were still in force, and that in order to take away any such grounds from under his feet, and to do away with the chance of any complication with the United States' Government, he had decided to buy him out, as I have already said.

I then suggested that the better plan would be not to transfer Mr. Torrey's grant, but to have it cancelled and obtain a fresh one from the Sultan, which should be formally drawn up, and be, so far as regards the Sultan, a fairer and less one-sided concession.

Such, the Baron said, was his desire.

On the 18th ultimo, Her Majesty's ship "Hart," Commander Evans, arrived here, and I determined to proceed in her to Brunei for several reasons, one of which I have reported to your Lordship in my despatch No. 16 Consular of the 29th December last. But not the least important object of my visit was to watch the movements of Baron de Overbeck, whose unsupported verbal professions I considered I was not justified in accepting without due consideration, because, from my [illegible] position in [illegible], where there are no European merchants, it was impossible for me to learn anything of his antecedents, and his previous connection with Mr. Torrey, in 1875, did not appear in his favour; and it occurred to me that if the enterprise were undertaken by a British Company, they would, before going to the expense of fitting out a steamer, and engaging a staff to proceed to Borneo to obtain grants conveying sovereign rights, have officially informed your Lordship and the Colonial Office of their purpose, and I should have received instructions as to the course your Lordship desired I was to [illegible]. Captain Baron von Oesterreicher, who visited Labuan in the [illegible] [illegible] "Freiderich" in 1875, informed us that he had been instructed by [illegible] to visit North and West Borneo, as Baron de Overbeck was [illegible] Vienna to occupy that portion of the island.

At Brunei the Baron having received the impression that I was [illegible] thought fit to support his verbal statement by the following [illegible]

BEST COPY AVAILABLE

1. An Agreement with Mr. Torrey, transferring to the Baron the office of President of the American Trading Company, with all the rights, &c., appertaining to that office, for the sum of 15,000*l.*, minus the expenses of the present expedition.

2. An Agreement between himself and Mr. Alfred Dent, for the purpose of developing the resources of North Borneo, the capital in the first instance being 10,000*l.*,* of which Mr. Dent's share is 6,000*l.*

3. Letter of instruction from Mr. Dent, placing the steam-ship "America" at the Baron's disposal, and giving him a credit of 2,000*l.* at a house in Singapore for commercial operations apart from the main object of the expedition, and stating that Messrs. Pretyman, Pryer, and Simpson have been engaged, and their services placed at the Baron's disposal.

After perusing these documents, I gave the Baron to understand that he was wrong in supposing that I had an intention of opposing him; but that I thought that any lease should, in the first place, be made in the name of the Baron and Mr. Dent conjointly, and not in his own name alone, as he at first proposed; that it should be provided that the grant is not transferable to the citizens of a foreign State without the consent of the British Government; and that, in accordance with Clause 10 of the Treaty, the whole concession should be made up by the Sultan, subject to the consent of the British Government.

The Baron objected to my second proposal concerning the transferability of the grant, but as he agreed to the remaining two, I did not press it, since the consent of the British Government could have been always withheld until some arrangement on this point had been come to.

The Sultan likewise promised me at once that he would make no concession without inserting a clause subjecting it to the approval of the British Government.

A few days afterwards I was compelled to return to my duties at Labuan, and left Brunei with the promise of the Sultan and the Baron that the clause I desired should be inserted.

Soon after arriving in Labuan I received a letter from the Consular Agent, informing me that Mr. Overbeck objected to the insertion of the clause, and was doing his utmost to prevail on the Sultan to object likewise, using such arguments as the following, viz.: that the country was the Sultan's own dominion, and he could do what he liked with it; that the English Government had hitherto done nothing towards developing it; and that in the matter of the arrears of rent due by the Coal Company (always a sore point with the Sultan) the Government had not in any way assisted him.

Upon receiving this information, I thought it my duty to proceed at once to Brunei to learn the true state of the case. I arrived there, however, a few hours too late, as the Sultan and Tumagong's seals had been affixed to five separate agreements and concessions, copies of which, supplied by Baron de Overbeck, I transmit herewith for your Lordship's information.

His Highness had a boat prepared to send over to Labuan the drafts [illegible]he concessions, but Mr. Overbeck, by threatening to leave the river if the deeds were not at once signed, and by actually sending his ship down to the bar while he himself remained in the town in his steam-launch, prevailed upon the Sultan to affix his seal.

His Highness received me in evident trepidation, meeting me at the door of his Palace (an unusual proceeding), and leading me by the hand to my seat. He stated that he had desired to act in accordance with the Treaty and his promise to me; but that Mr. Overbeck had prevailed upon him by his pertinacity to sign the concessions, and had, moreover, given him a written document, which stated that he and Mr. Dent would take the consequences if the British Government complained of the breach of Treaty by His Highness, and added that Mr. Overbeck was a European and that he was going to Labuan, and that if he had done wrong I could deal with him there.

Taking into consideration the great age of the Sultan, the pressure brought to bear upon him by Baron de Overbeck, and the known fact that he had endeavoured, so far as he was capable, to fulfil his Treaty engagement in this matter, I took no further steps than to inform His Highness that I should report all the circumstances to Her Majesty's Government.

The concessions obtained by Messrs. Overbeck and Dent include the whole northern portion of Borneo from the River Sulaman on the west to the River Sibuco on the east, and, to the south of Sulaman, the harbours and coasts of Gaya and Sapangar, the districts of Pappar, Benoni, and Kimanis in the near vicinity of Labuan.

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* Exclusive of the amount to be paid to Mr. Torrey.

The Sultan of Brunei's territory extends, at the utmost, only to the west side of Malludu Bay, though formerly the Brunei kingdom extended as far as Cape Kaniungan, on the east coast, in latitude 1° north. The remaining territory mentioned in the grants is actually under Sulu rule, and occupied by Sulu Chiefs, and it was only because the districts were mentioned in the original American grants that they are again included, and Mr. Overbeck will now have to make a separate agreement with the Sultan of Sulu for them.

The new lessees thus become possessed of all the best harbours in Borneo, and of those which may be said to command to some extent the route to China, vessels in the north-east monsoon passing at no great distance from North Borneo. The principal harbours are, commencing from the south, Gaya, Sapangar, Ambong, Malludu, and Sandakan.

Not only does this portion of Borneo contain the best harbours, but it also possesses the best soil, and is richest in natural productions, such as birds-nests (in which the River Kinabatangan is especially rich), camphor, rattans, sago, gutta-percha, &c., and there can be but little doubt but that when explored it will be found to contain valuable minerals; the existence of coal is already known. And here I may mention, that in the new concessions the right to work the coal in the district held by the Oriental Coal Company is excepted, though the Sultan would be justified in cancelling his engagement with that Company.

If supported by the occasional presence of a gunboat, I think the proposed Company would not have much difficulty with the natives, many of whom would welcome British rule; if this assistance is not afforded them, considerable tact and knowledge of native character would be requisite in the treatment of the coast natives, especially those in the Sulu portion. With the aborigines no difficulty would be experienced.

The result to the Colony of Labuan if the new scheme proves successful, and is worked on a large scale, would be probably the annihilation of its trade; for if Europeans were settled along the coast the Sulu trade would all go to Sandakan, while the Borneo trade would all be in the hands of the Company, and probably be shipped direct to England or to Hong-kong or Singapore, and our Chinamen, who are always endeavouring under great difficulties, and at the risk of their lives, to settle along the coast, would desert Labuan and flock to the ports at which Europeans had established themselves.

But if the new Company is a *bonâ fide* British undertaking, perhaps, as I have said above, the interests of Labuan should not be objected to it, though your Lordship has vetoed a similar proposal by the successful Ruler of Sarawak; as it is, however, Baron de Overbeck, an Austrian subject, and Mr. Dent hold valuable concessions of territory, which at any time they can transfer to one or another of the Governments which have at various times shown a disposition to occupy some port in Borneo—I allude to the American, Spanish, Italian, Austrian, and perhaps German Governments.

It was to prevent the possibility of this that I tried to bring about the insertion of the clause subjecting the concession to the sanction of the British Government, which before giving its approval could have named its own terms and conditions.

One thing, however, should not be forgotten, and that is, that by the present arrangement the concession to the Americans is cancelled, the Sultan having received the sum of 5,000 dollars in settlement of all claims arising from that concession, while the new grant contains the name of an English merchant of position.

I trust your Lordship will approve the steps I have taken in this matter, and will honour me with instructions as to the course to be pursued.

I have, &c.
(Signed) W. H. TREACHER.

P.S.—Since writing the above I have received the annexed note from Baron de Overbeck in reply to one I addressed to him, in which he states that in any cession he may obtain from the Sulu Sultan a clause shall be inserted making it not transferable to foreigners without the consent of the British Government.

W. H. T.

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### Inclosure 1 in No. 131.

*Agreements respecting the Cession of Territory to Messrs. Dent, Overbeck, and Co.*

I. THE Sultan Abdul Mumin Ebu Marhou Mulanan Abdul Wahab of Brunei, do hereby grant to Gustavus Baron de Overbeck and Alfred Dent, Esq., of London, conjointly their heirs, associates, successors, or assigns, all the territories belonging to me from the Sulaman River on the north-west coast of Borneo unto the River Pietan on the north-east coast of the island, containing twenty-one States, together with the Island of Banguey and all the other islands within three marine leagues of the coast, for their own exclusive uses and purposes.

In consideration of this grant the said Baron de Overbeck and Alfred Dent promise to pay severally and conjointly to the said Sultan Abdul Mumin, his heirs or successors, the sum of 6,000 dollars per annum. The said territories are from this date declared vested in the said Baron de Overbeck and Alfred Dent, their heirs, associates, successors, or assigns, for so long as they shall choose to hold them, provided, however, that His Highness the Sultan shall have the right to resume the control and government of the said territories if the above-mentioned annual compensation shall not have been paid for three successive years.

Done at Brunei, this 29th day of December, 1877.

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I, the Sultan Abdul Mumin Ebu Marhoum Mulana Abdul Wahab of Borneo, do hereby grant to Gustavus Baron de Overbeck and Alfred Dent, Esq., of London, their heirs, associates, successors, or assigns, all the following territories belonging to the Kingdom of Brunei, and comprising the States of Pietan, Sugut, Bangaya, Labuk, Sandakan, Kinabatangan, Mamiang, and all the territories as far as the Sibuco River, with all the islands within three leagues of the coast belonging thereto, for their own exclusive and absolute uses and purposes. In consideration of this grant the said Baron de Overbeck and Alfred Dent, Esq., promise to pay conjointly and severally, as compensation, the sum of 2,000 dollars per annum.

From this date the said territories are hereby declared vested in the said Baron de Overbeck and Alfred Dent, Esq., their heirs, associates, successors, or assigns, for so long as they shall choose or desire to hold them, provided, however, that His Highness the Sultan shall have the right to resume the control and government of the said territories if the above-mentioned annual compensation shall not have been paid for three successive years.

Done at the Palace at Brunei, this 29th December, 1877.

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I, the Sultan Abdul Mumin Ebu Marhoum Mulana Abdul Wahab of Brunei, do hereby grant to Gustavus Baron de Overbeck and Alfred Dent, Esq., of London, conjointly, their heirs, associates, successors, and assigns, all the territory and land belonging to me on the west coast of Borneo, comprising Gaya Bay from Gaya Head to Loutut Point, including Sapangar Bay and Gaya Bay, and Sapangar Island and Gaya Island, and all the other islands within the limits of the harbour and within three marine leagues of the coast; likewise the province and territory of Papar, adjoining the Province of Benoni, and belonging to His Highness the Sultan as his private property.

In consideration of this grant the said Baron de Overbeck and Alfred Dent promise to pay severally and conjointly to the said Sultan Abdul Mumin, his heirs or successors, the sum of 4,000 dollars per annum. The said territories are from this date declared vested in the said Baron de Overbeck and Alfred Dent, their heirs, associates, successors, or assigns, for so long as they shall choose and desire to hold them, provided, however, that His Highness the Sultan shall have the right to resume the control and sovereignty of the said territories if the above-mentioned annual compensation shall not have been paid for three successive years.

Done at Brunei, this 29th day of December, 1877.

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I, the Pangeran Tumangong of Brunei, Sahibulbahar bin almar hoom Sri Paduka Mulana al Sultan Omar Ali Sufidin, hereby grant to Gustavus Baron de Overbeck and Alfred Dent, Esq., of London, their heirs, associates, successors, or assigns, the Provinces of Kimanis and Benoni, on the north-west coast of Borneo, with all the islands belonging thereto within three marine leagues of the coast, the said territories belonging to me as my private property, to hold for their own exclusive and absolute uses and purposes.

In consideration of this grant, the said Baron de Overbeck and Alfred Dent promise to pay as compensation to the Pangeran Tumangong, his heirs or successors, the sum of 3,000 dollars per annum. The said territories are hereby declared vested in the said Baron de Overbeck and Alfred Dent, Esq., their heirs, associates, successors, or assigns,

**for so long as they shall choose or desire to hold them, and they further promise to protect the Pangeran Tumangong with kindness.**

**Done at Brunei, 29th December, 1877.**

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**To all Nations on the face of the earth whom these matters may concern, we, Abdul Mumin Ebu Marhoum Mulana Abdul Wahab, Sultan of Borneo, send greeting:**

**Whereas, we have seen fit to grant unto our trusty and well-beloved friends, Gustavus Baron de Overbeck and Alfred Dent, Esq., certain portions of the dominions owned by us, comprising the entire northern portion of the Island of Borneo, from the Sulaman River on the west coast to Maluda Bay, and to the River Pietan, and thence the entire eastern coast as far as Sibuco River, comprising the States of Patan, Sugat, Bangaya, Labuk, Sandakan, Kinabatangan, and Mumiang, and other lands as far as Sibuco River, the Provinces of Kimanis and Benoni, the Province of Papar and the territory of Gaya Bay and Sapangar Bay, with all the land and islands belonging thereto, and likewise the Island of Banguey for certain considerations between us agreed:**

**And whereas, the said Gustavus Baron de Overbeck is the chief and only authorised representative of his Company in Borneo:**

**Now, therefore, know ye, that we, the Sultan Abdul Mumin Ebu Marboum Mulana Abdul Wahab, have nominated and appointed, and hereby do nominate and appoint, the said Gustavus Baron de Overbeck supreme ruler of the above-named territories, with the title of Maharajah of Sabah (North Borneo) and Rajah of Gaya and Sandakan, with power of life and death over the inhabitants, with all the absolute rights of property vested in us over the soil of the country, and the right to dispose of the same, as well as the rights over the productions of the country, whether mineral, vegetable, or animal with the rights of making laws, coining money, creating an army and navy, levying Customs rates on home and foreign trade and shipping, and other dues and taxes on the inhabitants as to him may seem good or expedient, together with all other powers and rights usually exercised by and belonging to sovereign rulers, and which we hereby delegate to him of our own free will.**

**And we call upon all foreign nations with whom we have former friendly Treaties and alliances to acknowledge the said Maharajah as ourself in the said territories, and to respect his authority therein, and in case of the death or retirement from office of the said Maharajah then his duly-appointed successor in the office of Supreme Ruler and Governor-in-chief of the Company's territories in Borneo shall likewise succeed to the office and title of Maharajah of Sabah and Rajah of Gaya and Sandakan, and all the powers above enumerated be vested in him.**

**Done at the Palace at Brunei, the 29th day of December, 1877.**

## Annex 17

## DESPATCH FROM ACTING CONSUL-GENERAL TREACHER TO THE EARL OF DERBY, WITH INCLOSURE, DATED 22 JANUARY 1878

## No. 142.

*Acting Consul-General Treacher to the Earl of Derby.*—(*Received March 25.*)

(No. 3. Consular.)

My Lord, "*Hart*," *Meimbong, Sulu, January 22*, 1878.

I HAVE the honour to report, with reference to the despatch No. 1, Consular, of the 2nd January, 1878, that the Baron de Overbeck and his Staff arrived at Meimbong in the steam-ship "America" on the 16th instant, for the purpose of obtaining a grant from the Sultan of Sulu of the territory in Northern Borneo extending from Maludu on the north to the River Sibuco on the east, which is already included in the grant or concession obtained from the Sultan of Brunei, who also claims these territories; but the Sulus being in actual possession, it was necessary to obtain a grant from Sulu before anything could be done there.

The Sulus claim the country extending from Kimanis to Balik Pappan, south of the Sibuco River, on the ground that it was conceded to them many years ago for assistance they rendered to a Brunei Sultan engaged in a conflict with a rival claimant to the throne; at present, however, the Sulus exercise authority only from and including Maludu to Balik Pappan, while the country between Pandassan and Maludu is comparatively independent of either Sovereign, and that between Pandassan and Kimanis is divided between the Sultan of Brunei and independent Brunei Chiefs.

The Sultan did me the honour of consulting me on the subject of the Baron's request, and I told him that any advice I gave would be given in the capacity of a friend of His Highness, and would bear no official weight, as I had received no instructions from your Lordship in the matter. I informed him that, to the best of my belief, the Baron represented a *bonâ fide* British Company or co-partnership, with sufficient capital, or the capacity of raising it, to carry out an undertaking of the kind; and that if His Highness thought fit to make the desired concession it would be well for him to have a clause inserted rendering it not transferable to other than British subjects without the consent of the British Government, to obviate the risk of its ever passing into the hands of his enemies the Spaniards; and also that he should insist that any differences which may hereafter arise between himself and the British Company should be referred for decision to the Consul-General in Borneo, so as to render impossible the occurrence of a similar state of things as that at present existing between the Oriental Coal Company of Labuan and the Sultan of Brunei, which, to a native Prince, is inexplicable, as he cannot understand how it is that a Government is unable to compel its subjects to observe their solemn engagements with others. I may mention here that this question has tended to lessen our influence at Brunei.

His Highness also consulted me, in a very intelligent manner, on several other points, such as the amount he should ask, &c., and in the advice I ventured to give I endeavoured, so far as possible, not to lose sight of His Highness's own interest while not opposing those of the proposed British Company, which already holds from Brunei a concession of the territories in question.

I should also state that the Baron de Overbeck has acted on this occasion with great courtesy, and my suggestions have been in the main embodied in the grant or agreement which has been sealed and signed this day, and a copy of which, together with one of what may be called the Baron's Commission,* as the present head or Governor of the proposed Company, I have now the honour to inclose.

By this grant, in consideration of the annual payment to the Sultan of the sum of 5,000 dollars, the representatives of the proposed Company obtain the concession of the country extending from the Pandassan River on the west coast to the Sibuco River on the east, including the five harbours of Maludu and Sandakan, and Darvel and Sibuco Bays.

The Sultan was anxious that the limits should be fixed from Kimanis to Balik Pappan, explaining that by making no mention of the country from Kimanis to Maludu he might be thought by his people to be abandoning his claim to it, though at the same time he acknowledged that his power actually only commences at Maludu, and that consequently he would ask no additional rental if the limits were fixed as he desired; it being considered, however, that complications might arise in the future with the actual possessors of that country—for the most part independent Chiefs—a compromise was effected and the limits fixed from the Pandassan River to the Sibuco River, the latter limit being, according to a Dutch official chart, in the Baron's possession, the northern limit of Dutch territory on that coast, though, as I have not with me the Treaty said to exist with Holland confining its right to colonise in these seas within certain limits, I am unable to state whether they are justified in coming so far north on that coast.

The Sultan assured me that at the present moment he receives annually from this portion of his dominions the sum of 5,000 dollars, namely, 300 busings of seed pearls from the Lingabo River alone, which at 10 dollars a busing comes to 3,000 dollars per annum, and about 2,000 dollars from four birds-nest caves in the Kinabatangan River, which are his family possessions.

This portion of Borneo at the present time, from want of a settled Government, is very sparsely inhabited, and for the most part still clothed with jungle, much of which, however, would become valuable as timber for exportation; but the soil in many places notably up the Kinabatangan River, is known to be of excellent quality, and well adapted, for tropical produce, while everything, reports of natives and the character of the country, &c., is in favour of the existence of valuable mineral resources, and the trade in birds-nests, rattans, camphor, seed pearls, has been ascertained to be valuable, and only to require development. Such being the case, and a settled Government being established in no long time Chinese and others would flock into the country, and if the British Government gave its moral support there need be no fear of any great difficulty in dealing with the natives, who from the operations undertaken by Her Majesty's naval forces in the time of Sir James Brooke, have been taught the power of Europeans, so that the way is in a measure prepared for a Company undertaking the development and civilization of the country; and there would be no need, in all probability, for the repetition of the lessons given by Sir James Brooke.

As I have stated in my previous despatch on this subject, the prospects of the Colony of Labuan as an emporium for the collection of the trade of northern and eastern Borneo and the Sulu Archipelago would be greatly endangered by the establishment of a Company as proposed, but in my opinion such a result should not stand in the way of such an important undertaking, provided only that it is taken in hand by a *bonâ fide* Company, with sufficient capital, and with the clear intention and the ability to carry it out in a proper manner. On this latter point it is impossible for me to form an opinion, while your Lordship can readily obtain the requisite information in London.

I have, &c.
(Signed) W. H. TREACHER.

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### Inclosure in No. 142.

*Further Agreement respecting the Cession of Territory to Messrs. Dent, Overbeck, and Co.*

WE, the Sri paduka maulana al Sultan Mohamed Jamaal-ala Alam ibni al Marhom Sri paduka al Sultan Mohamed Palal Sultan of Sulu and the Dependencies thereof, on behalf of ourself, our heirs and successors, and with the consent of the Datoos in Council assembled, hereby grant and cede of our own free and sovereign will to Gustavus Baron de Overbeck, of Hong kong, and Alfred Dent, Esq., of London, co-jointly as the representatives of a British Company, their heirs, associates, successors, and assigns for ever, and in perpetuity, all the rights and powers vested in us over all the territories and lands being tributary to us on the mainland of the Island of Borneo, commencing from the Pandassan River on the west coast to Maludu Bay, and extending along the whole east coast as far as the Sibuco River in the south, comprising all the provinces bordering on Maludu Bay, also the States of Pietan, Sugut, Bangaya, Labuk, Sandakan, Kinabatangan, Mamiang, and all the other territories and states to the southward thereof, bordering on Darvel Bay and as far as the Sibuco River, with all the islands belonging thereto within three marine leagues of the coast.

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* Not obtained.—W. H. T.

In consideration of this grant the said Baron de Overbeck and Alfred Dent promise to pay to his Highness the Sultan, his heirs or successors, as compensation, the sum of 5,000 dollars per annum.

The said territories are hereby declared vested from this date in the said Baron de Overbeck and Alfred Dent, Esq., co-jointly their heirs, associates, successors or assigns, for so long as they shall choose or desire to hold them; provided, however, that the rights and privileges conferred by this grant shall never be transferred to any other nation or company of foreign nationality without the sanction of Her Britannic Majesty's Government first being obtained.

If, in the future, any dispute shall arise between us, our heirs and successors, and Gustavus Baron de Overbeck, or his Company, we both will refer it for the decision and judgment of the Queen's Consul-General in Brunei;

And, further, if we Sri Paduka Maulana Mohamed Jemal al Alaam, or our heirs and successors, experience any trouble in the future, Gustavus Baron de Overbeck and his Company promise to help us by giving advice and counsel to us to the best of their ability.

Done at our Palace at Licup, in the Island of Sulu, the 22nd day of January, 1878.

## Annex 18

## MEMORANDUM BY SIR J. PAUNCEFOTE DATED 7 MAY 1878

### *Memorandum by Sir J. Pauncefote.*

I REGRET to say that I am quite unable to concur in the views of the Colonial Office in this matter.[*]

They have formed their opinion apparently on the Report of Mr. Ussher (Inclosure No. 2), and their conclusions are founded on wrong premises.

I happen from my long residence in China to be personally acquainted with the promoters of this scheme and with its real features, and Mr. Treacher's views on the subject, as expressed in his despatches, are much sounder and more accurate, in my opinion, than Mr. Ussher's.

The latter gentleman could hardly be expected to know much about China people and China affairs, having but recently been transferred from a small West India Island to Labuan, and he appears to me to do injustice to his *locum tenens*, Mr. Treacher, and to be needlessly alarmed lest the proposed scheme should injuriously affect the trade of his little Colony.

The report of Baron von Overbeck's proceedings are given in Mr. Treacher's despatches No. 1 (Borneo) and No. 2 (Sulu).

The objections raised may be summed up as follows:—

1. The promoters are *adventurers* without sufficient capital.[†]
2. It does not appear that it is a British undertaking.
3. It does not appear that the promoters are in a position to carry out the enterprise efficiently, and to deal firmly and fairly with the natives coming under their jurisdiction.
4. The concession is an infringement of the Treaty with Brunei (Article X).
5. The scheme may saddle Her Majesty's Government with onerous responsibilities, and embroil them with Sulu and Brunei, and possibly with Spain and other Powers.

I will deal with those objections *seriatim*.

1. As regards the *status* of the promoters.

The principal capitalist concerned is Mr. Alfred Dent, *a gentleman of the highest respectability*, and quite incapable of associating himself with "adventurers." Baron von Overbeck is the Agent of the Association. He is an Austrian by birth, and was for many years in the well-known China house of Dent and Co., and Consul-General for Austria in Hong Kong. He made a considerable fortune, but lost it during the commercial crisis which ruined so many houses in China.

I am assured that the Association is purely *British*, that they have ample capital, and that they have no idea whatever of parting with their concession to any foreigners or foreign State. They are, indeed, precluded from doing so by the terms of the Sulu concession, and would, no doubt, extend the same undertaking to the Brunei concession.

That disposes of objections 1 and 2.

As regards objection No. 3 (that they cannot carry out the scheme efficiently as regards the exercise of jurisdiction), it is partly answered by the above remarks, but I would add that the Company pay a yearly tribute to the Sultan, who remains their Suzerain, and that, if necessary, we can exercise exterritorial jurisdiction over British subjects under the Treaty of Brunei[‡] (Article ).

[*] See No. 155.

[†] This is a most unwarrantable statement, as to which Mr. Ussher has been misled.

[‡] This is likewise the case in Zanzibar with reference to the Mackinnon Scheme.

The fourth objection is that the concession is an infraction of the Xth Article of the Treaty of Brunei of 1847.

This point is quite untenable. In the first place, I would observe that this Article X is practically obsolete. It was inserted for the reasons given in Mr. Bulwer's despatch, from Labuan, No. 8 of 16th December, 1874,[*] but has been disregarded on several occasions by the Sultan without protest from Her Majesty's Government.[†] Indeed, as the late Rajah Brooke observed, this Article which prohibited the Sultan from ceding any of his territory to any *other nation than Great Britain, or to the subjects of any such other nation*, deprived him unfairly of his rights without giving him any equivalent.

Thus, in 1853, and again in 1861, the Sultan made vast cessions of territory to Rajah Brooke, without objection from Her Majesty's Government. It is true that the latter was a British subject, and therefore *not within the terms of Article X of the Treaty*, but he represented a foreign State, and the spirit of the Article was therefore contravened.

But I now come to an important part of the history of the Dent-Overbeck scheme, which is either unknown, or has been overlooked by the Colonial Office.

The territory which has been ceded to what I may term the British Company belonged to an *American Company*, whom Mr. Alfred Dent and his friends *have bought out*.

The American Company was formed by an American trader in Hong-kong, named Torrey, and commonly called "Rajah Torrey." This individual and his associates were undoubtedly "adventurers." They established a sort of Government, issued laws on the model of the Hong-kong Ordinances, and were looked upon with no friendly eye by the Government of Labuan.[‡] They had no capital and no credit, and they came to grief. The survivor of the Association, "Rajah Torrey," has been endeavouring to sell his rights to foreign Governments, but ultimately found a purchaser in Mr. Alfred Dent, who sent out Baron von Overbeck in a steamer of his own, the "America," to explore the place and verify the title of the Rajah Torrey.

The contract was completed on the spot, and it is virtually an *assignment* of the concession made some ten years ago to the American Company, and *not a fresh concession*. It was agreed at the suggestion of Mr. Treacher that instead of a deed of assignment being given to the British Company, "Rajah Torrey" should surrender his title-deeds to the Sultan, who thereupon should re-grant the same territory to the British Company. The title to that part of the territory which lies on the north-east of Borneo having been disputed by the Sultan of Sulu, Baron von Overbeck obtained from the latter a separate grant, so as to confirm the grant of the Sultan of Brunei.

We never objected to the grant of this territory to American subjects, and we can hardly object to its transfer to *British subjects*,[§] especially as the latter are not within Article X of the Treaty of Brunei, appealed to by the Colonial Office.

As regards the last objection, that the scheme may saddle Her Majesty's Government with responsibilities, and involve them with the Sultans of Brunei and Sulu,[‖] and possibly with Spain or other Powers, this is a vague statement, which, in my opinion, should have no weight as against the advantage which must accrue to British interests from the transfer of this territory to a British Company. Its value, both commercially and strategically speaking, is described by Rajah Brooke in the papers relating to the proposed British Protectorate over Brunei.[¶] New outlets for trade are wanted, and although I do not think Her Majesty's Government are called upon to give any active support to this scheme (which I consider a very spirited and thoroughly English enterprize), I am at a loss to perceive why they should go out of their way to *obstruct it*, instead of treating it precisely on the same footing as the Zanzibar scheme, of which Mr. Mackinnon and other gentlemen in the city are the promoters.

I understand that Mr. Alfred Dent and Baron von Overbeck will return to this

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[*] See Volume of Papers relating to the Establishment of a British Protectorate in Brunei.

[†] Printed Paper, November 16, 1874, note at foot of p. 5.

[‡] See Labuan Consular despatches, No. 14 of August 17, 1872, and No. 12 of July 6, 1875.

[§] The grants are made to Mr. Dent and Baron von Overbeck, but they are trustees for the British Company.—J. P.

[‖] The Sultans of Brunei and Sulu cannot possibly complain; and as regards the Spanish Government, they are trying to annex the whole of the Sulu dominions, and it is the more important that we should save something from their grasp. As for the "other Powers," the Dutch are the only people who might pretend to be aggrieved; but they have not complained during Rajah Torrey's time, nor since the transfer to the Dent-Overbeck Company.

[¶] It is half-way between Singapore and Hong Kong, and opposite Saigon, and its strategical value on the east coast is described by Rajah Brooke as enormous. It has fine harbours, rivers, forests, &c., a good climate, vast mineral resources, and the soil is fit for the cultivation of all tropical products. It is worth a hundred "Fijis.—J. P.

**country from Borneo in August next, for the purpose of laying the matter fully befor Her Majesty's Government, and I submit that it would be only fair to them and th other gentlemen who have embarked capital in the undertaking, and prudent in political point of view, to suspend all action until they have had an opportunity of bein heard.**

**If Lord Salisbury concurs in that course, we should so inform the Colonial Offic and Mr. Treacher, and instruct the latter that the confirmation of the temporary appoin ment of Mr. Pryer as Vice-Consul at Sandakan, reported in his despatch No. 4, mu stand over for the present, and until Her Majesty's Government have come to a fin decision.**

**In replying to the Colonial Office* we can express concurrence in the reply sent b them to Mr. Treacher with reference to the collection of duties in Labuan on vesse arriving from Borneo by the agents of the Company.**

***May 7, 1878.*** **J. P.**

# Annex 19

# RATIFICATION OF CONTRACT OF VASSALAGE BETWEEN THE NETHERLANDS INDIES GOVERNMENT AND THE SULTAN OF BOELOENGAN, 2 JUNE 1878, PUBLISHED IN PRINTED RECORDS OF THE SECOND CHAMBER 1879-1880, NO. 86. *OVEREENKOMSTEN MET INLANDSCHE VORSTEN IN DEN OOST-INDISCHEN ARCHIPEL*. BOELOENGAN. ACTEN VAN VERBAND EN VAN BEVESTIGING EN CONTRACT. NO. 21, AND EXPLANATORY MEMORANDUM (ENGLISH TRANSLATION)

STATEMENT of the existing taxes in the Kingdom of Goenoeng Taboer (in accordance with Article 14 of the Contract).

(a.) A duty of 10 per cent. on all forest products gathered in.
(b.) The yearly delivery of 21 hattis of birds'-nests; ½ picol tripang; 1 katti tortoiseshell per family;* and 50 lots of dried fish per family by the Badjoees.

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## BOELOENGAN.

### DEEDS OF ENGAGEMENT AND OF CONFIRMATION AND CONTRACT.

### *Deed of Engagement.*

I, Molana Mahomad Kahar Oedin, Prince of Boeloengan, solemnly promise: that I will be faithful and true to the King of the Netherlands, and to the Governor-General of Netherlands India, as the King's Representative in these regions, and govern the Kingdom of Boeloengan which is ceded to me as a fief and as such by me accepted, with all zeal, attention, and devotedness for and on behalf of the Netherlands Indian Government, in accordance with the institutions and laws of the kingdom.

That I will sacredly and truly observe the agreements concluded between the Netherlands Indian Government and my predecessors;

That I will at all times be ready to come to an understanding with the Netherlands Indian Government concerning points not foreseen in those agreements, and which may hereafter appear to require regulation for the interests of the country, whilst I declare myself specially willing to enter upon a re-examination of the conventiaonl stipulations now in force, to make them more accordant with the requirements of the present time.

And moreover that I will do everything that beseems a true and honourable Prince and vassal.

I have ratified this declaration on oath, sealed and signed it in presence of Jacobs Josephus Meijer, Knight of the Order of the Netherlands Lion and of the Luxemburg Order of the Oaken Crown, Resident of the Southern and Eastern Division of Borneo, and in presence of the following Nobles; Radja Moeda, Datoe Marbahar, Pangeran Bandahara, Datoe Alam, and Moekamat.

In presence of me, Resident of the Southern and Eastern Division of Borneo.

(Signed) MEIJER.

(Seal and signatures of the Prince and Nobles in Arabic characters.)

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### *Deed of Confirmation.*

Whereas at a meeting in the capital of the kingdom held on the 31st October, 1874, by the Deputy Resident of Koetei and the east coast of Borneo, with the mantri's and other electors, the uncle of the late Prince of Boeloegan Datoe Alam Mohamad Chalifatoel Adil, who died on the 30th April, 1874, was unanimously chosen to succeed him under the name of Molana Mohamad Kahar Oedin;

And whereas the aforesaid Molana Mohamad Kahar Oedin on this 2nd day of June of the year 1878, before me Jacobus Josephus Meijer, Knight of the Order of the Netherlands Lion and of the Luxemburg Order of the Oaken Crown, Resident of the Southern and Eastern Division of Borneo, has solemnly sworn, and in my presence sealed and signed the written Engagement annexed to this Deed;

Wherefore the aforesaid Molana Mohamad Kahar Oedin is hereby by me, in the name and on behalf of the Netherlands Indian Government, subject to the approval of the Governor-General of Netherlands India, solemnly confirmed in his dignity of Prince of Boeloengan, and that under the name and title of Molana Mohamed Kahar Oedin; in witness whereof a copy of this Deed as well as of the written Engagement executed by him, shall be delivered to him as soon as these documents shall have been provided with the certificate of approval by the Governor-General.

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* The birds'-nests are only to be brought by the ("dajak") inhabitants of the uplands (the Basap tribes); the tripang and tortoiseshell by the other population, excepting the Badjoees).

This done at Boeloengan the day and year above written.

(Signed) MEIJER.

These Deeds of Engagement and Confirmation are approved and ratified this 1st day of September of the year 1878.

(Signed) VAN LANSBERGE,
*Governor-General of Netherlands India.*

By order of the Governor-General,
(Signed) SPRENGER VAN EYK, *General Secretary.*

[Contract between Jacobus Josephus Meijer, Knight, &c., and Mohamad Kahar Oedin, Sultan of Poeloengan, and his Nobles, dated the 2nd June, 1878.

[Preamble and twenty-six Articles to the same effect as the Contract with Kottawaringin, ratified the 18th October, 1878].

*Description of the Boundaries of the Kingdom of Boeloengan, and Statement of the Islands belonging to it (in accordance with Article II of the Contract).*

The boundaries of the Kingdom of Boeloengan are:—

Next Goenoeng Taboer: from the sea-strand, inland the River Karantiegan, from its mouth to its source; then the Batoe Beoekkier and the mountain Palpakh!

Next the Solokh Possessions: on sea the angle called Batoe Finagat, and then the River Tawan.

The following islands belong to Boeloengan, viz.:—

Terekkan, Nanoekan, and Sebittikh, with the islets belonging thereto.

STATEMENT of the existing taxes in the Kingdom of Boeloengan (in accordance with Article 14 of the Contract).

A duty of 5 per cent. on all imported and exported commercial goods.

## TRANSCRIPT AND TRANSLATION

### Second Chamber of the States-General

### 1879-1880 SESSION – 86

*Agreements with local rulers in the East Indies Archipelago.*

... Artikel 2: "Het gebied van het rijk van Boeloengan wordt verstaan te zijn zamengesteld uit de landen en eilanden, omschreven op de aan dit contract gehechte opgave".

"The territory of the realm of Boeloengan is deemed to be constituted by the lands and islands as described in the statement annexed to this contract".

## TRANSLATION

### Second Chamber of the States-General

### 1879-1880 SESSION – 86.

***Agreements with local rulers in the East Indies Archipelago.***

### Sambalioeng, Goenoeng Taboer and Boeloengan.

### EXPLANATORY MEMORANDUM

### No. 22

**The territories of Sambalioeng, Goenoeng Taboer and Boeloengan (to which the Tidoeng territories belong) form the northern part of our possessions on the eastern coast of Borneo. Their respective areas and populations are estimated to be 300, 240 and 1,100 square geographic miles and 25,000, 20,000 and 25,000 inhabitants.**

**These territories were ceded by the Sultan of Banjarmasin to the East Indies Company in 1787, and this cession was renewed in later contracts with the Netherlands East Indies Government (dated 3 January 1817, 13 September 1823 and 4 May 1826).**

**Formerly the first two of these territories, apparently united with Boeloengan, constituted a single entity known as the realm of Berouw. During the rule of Sjech Abedien, the seventh sultan of Berouw (to which Boeloengan by then no longer belonged), Radja Alam, a grandson of the former sultan, managed to separate Sambalioeng (at the time named Tandjoeng) from the remainder of the realm of Berouw and proclaimed himself sultan of that territory.**

**An expedition was sent out against this Radja Alam in 1834 to punish him for the protection he had afforded to Sulu pirates. The capital Tandjoeng was destroyed and Radja Alam taken to Macassar. He was, however, permitted to return to his country in 1837. The new capital of the sultanate, which was built at some distance from the former one, was given the name of Sambalioeng. On the occasion of the expedition against Tandjoeng, the sultan of Boeloengan came to swear the oath of allegiance to the Government and a contract was entered into with the sultan of Goenoeng Taboer under which he recognised the sovereignty of the Government and was given the administration of the realm of Berouw until further disposition by the Government.**

**In 1844 Weddik, the government inspector for Borneo and Lingga, wrote to the sultans of Sambalioeng, Goenoeng Taboer and Boeloengan in identical terms. In the letter he expressly recognised them as heads of separate realms**

under the control of the Netherlands and also sent them some insignia as proof of their dignity.

Identical contracts were concluded with the rulers of the three territories in question in 1850, at around the same time, under which these territories were transferred to them in fief.

In order to ensure that the provisions made at that time are brought more into line with present-day requirements and to supplement them, the following new agreements dated 21 May and 2 and 6 June 1878 have been concluded with the sultans of Goenoeng Taboer, Boeloengan and Sambalioeng, to which are appended statements of the boundaries of the three territories and of the taxes levied there.

In addition, the instruments of allegiance and confirmation, which were executed before the conclusion of the first two agreements, were signed by and issued to Datoe Maharadja Denda Hassan Oedin, sultan of Goenoeng Taboer, who succeeded his father in 1876, and Molana Mohamad Kahar Oedin, sultan of Boeloengan, who has taken the place of his uncle who died in 1874. The present sultan of Sambaliung has headed the administration since 1869. The instrument of allegiance which he signed in 1873 and the instrument of confirmation which was issued to him at that time, were laid before the States-General in 1875 (printed documents of the Second Chamber, 1875-1876 session, 82, no. 7).

## Annex 20

# *MEMORANDUM RESPECTING CESSIONS TO MESSRS. DENT AND OVERBECK BY SULTANS OF BRUNEI AND SULU OF TERRITORIES ON THE NORTH-EAST COAST OF BORNEO, AND POSITION OF HER MAJESTY'S GOVERNMENT IN REGARD TO SUCH CESSIONS*, DATED 6 OCTOBER 1879

### *Memorandum respecting Cessions to Messrs. Dent and Overbeck by Sultans of Brunei and Sulu of Territories on the North-East Coast of Borneo, and position of Her Majesty's Government in regard to such Cessions.*

IN the year 1865 the "American Trading Company"[*] obtained from the Sultan and Rajahs of Brunei grants of the territory now in question.

The original promoters of this Company were four Americans,[†] of no character or position, and the scheme failed.

Three of the promoters having died, the survivor, a Mr. Torrey, claimed the right to dispose of the Concessions as he pleased.

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[*] See despatch from Labuan, No. 14, August 17, 1872; and No. 12, Consular, July 6, 1875.

[†] Mr. Treacher, No. 1, Consular, Confidential; January 2, 1878. (Print, Part III., p. 98.)

In 1877 this Concession was bought by Baron de Overbeck' an Austrian subject, Consul-General for Austria-Hungary at Hong Kong, who had previously been manager in the house of Dent and Co., and Mr. Alfred Dent, a member of that firm, with a view to the formation of a British Company similar to, though on a smaller scale than, the late East India Company, having for its object the development of the natural resources of the country, which are represented as being very great.

In December 1877 Baron Overbeck arrived at Labuan, on board the British steamer "America," chartered for his use by Mr. Dent, in order to make arrangements for carrying out this scheme, and placed himself in communication with Mr. Treacher, Acting Consul-General at Brunei and Acting Governor of Labuan.

Mr. Treacher assisted Baron Overbeck with his advice. He pointed out that the payments stipulated for under the Concession not having been kept up by the original grantees, the Concession might be held to have lapsed; and he suggested that the original grant should be cancelled, and a fresh one obtained, urging at the same time that in any such fresh grant a clause should be inserted subjecting it to the approval of Her Majesty's Government.

Baron Overbeck promised that this should be done, and a similar promise was given by the Sultan of Brunei.

Notwithstanding these promises, as soon as Mr. Treacher returned from Brunei to Labuan, Baron Overbeck succeeded by strong pressure in inducing the Sultan of Brunei to sign five documents making the Concession, without any such clause as they had both promised to insert.

Of these five documents three are grants from the Sultan of various districts to "Gustavus, Baron de Overbeck, and Alfred Dent, Esq., of London, conjointly, their heirs, associates, successors, and assigns," for their own exclusive uses and purposes, in consideration of certain stipulated payments; the only proviso being that the Sultan should have the right to resume the control and government of the said territories in default of payment for three successive years.

The fourth document is a similar Concession from the "Pangeran Tumangong,"—who, it appears, is a powerful Chief, and probable successor to the throne of Brunei,—of lands on the north-west coast of Borneo; the only stipulation being that the grantees promise to protect the "Pangeran Tumangong" with kindness.

The fifth document is a declaration by the Sultan of the above Concessions, including the fourth, and appointing Baron de Overbeck supreme ruler of the ceded territories, with the title of "Maharajah of Sabah (North Borneo) and Rajah of Gaya and Sandakam, with power of life and death over the inhabitants, with all the absolute rights of property vested in the Sultan over the soil of the country, and the right to dispose of the same, as well as the rights over the productions of the country, whether mineral, vegetable, or animal, with the rights of making laws, coining money, creating an army and navy, levying customs rates on home and foreign trade and shipping, and other dues and taxes, on the inhabitants, as might seem to him good or expedient, together with all other powers and rights usually exercised by, and belonging to, Sovereign Rulers, which the Sultan thereby delegates to him of his own free will.

The document further calls upon foreign nations to acknowledge the said Maharajah (Baron de Overbeck) "as ourself" in the territories referred to, and provides that in the event of the death or retirement of the said Maharajah, his duly-appointed successor in the office of Supreme Ruler and Governor-in-chief of the Company's territories in Borneo shall likewise succeed to the office and title of Maharajah of Sabah and Rajah of Gaya and Sandakam, and that all the powers before enumerated should be vested in him.

The documents above referred to are quoted at some length, in order to show the very extensive powers conferred thereby on the grantees.

In reporting these arrangements, Mr. Treacher points out that under them the new lessees become possessed of all the best harbours in Borneo, and expresses the opinion that, with the occasional presence of a gun-boat, they would not have much difficulty in maintaining their position. He considers that the new scheme would annihilate the trade of Labuan, but that, if the new Company be a *bonâ fide* British undertaking, the interests of Labuan should, perhaps, not be objected to it. He further points out that the Concessions might be transferred to a foreign Government, which was his reason for endeavouring to procure the insertion of a clause subjecting the Concession to the approval of Her Majesty's Government.

The Concessions mentioned above included a large tract of territory over which the Sultan of Brunei had no rights, or, at all events, no practical control, being under Sulu rule, and occupied by Sulu Chiefs; and Mr. Treacher states that it was only because this territory was mentioned in the original grants to the American Company that they were again included in the grants to Baron Overbeck.

The Baron's next step, therefore, was to negotiate with the Sultan of Sulu, whose seat of Government was in the Island of Sulu, and who, until his recent Treaty with Spain, held the sovereignty over the Archipelago of that name lying between the Philippine Islands and Borneo, and over the district above referred to on the north-east coast of Borneo.

With regard to this negotiation, Baron de Overbeck wrote to Mr. Treacher on January 7, 1878, that he had no objection to inserting in any Treaty with the Sultan of Sulu a clause to the effect that the Concession should not be sold or transferred to any other nation or foreign Company, except with the consent of Her Majesty's Government.

This promise was duly carried out.[*]

Baron Overbeck went to Sulu, and Mr. Treacher also went there. The Sultan consulted Mr. Treacher, and the result was that the Sultan, with the consent of the Datoos in Council assembled, signed an Agreement, dated January 22, 1878, ceding to Baron de Overbeck and Mr. Alfred Dent, conjointly, as representatives of a British Company, their heirs, &c., for ever, all his rights in Borneo; provided that the rights and privileges conferred by the grant were not to be transferred to any other nation or Company of foreign nationality without the consent of Her Majesty's Government.

In reporting this, Mr. Treacher reiterated his opinion that the establishment of the new Company would greatly damage Labuan; but that such a consideration should not stand in the way of so important an undertaking, provided it were taken in hand by a *bonâ fide* Company, with sufficient capital, and with the clear intention and ability to carry it out in a proper manner.

In a despatch[†] dated January 31, 1878, Mr. Treacher reported a negotiation respecting a proposed transfer to the new Company of all the territory not occupied by the Spaniards in the Archipelago of Sulu; but nothing seems to have come of this proposal.

In virtue of the Concessions above described, granted by the Sultans of Brunei and Sulu, Baron Overbeck proceeded to form establishments, under agents appointed by him, at Sandakan and other places on the north-east coast of Borneo.

He also commissioned an agent at Labuan to collect duties on his behalf from boats arriving at that port from the west coast of Borneo;[‡] but Mr. Treacher felt it his duty to withhold his sanction from this step, and his action was approved by the Colonial Office.[§]

While matters were in this stage the Colonial Office[‖] consulted Mr. Ussher, the Governor of Labuan, who was in England on leave.

Mr. Ussher reported strongly against the Dent-Overbeck scheme, stating that he had been warned against Baron Overbeck as a person whose sole object in obtaining Concessions was to sell them to any Government who would take them off his hands at a profit.

He agreed with Mr. Treacher as to the injury that would be caused to Labuan by the proposed scheme, but differed from him as to the compensating advantages, and as to the probable absence of difficulties with the natives; and he urged that, if the proceedings of the Company were to be validated, they should receive a Charter from the British Crown, such as was granted to the East India Company, with power to Her Majesty to resume possession, and that it should be a *bonâ fide* British undertaking, registered as such in England, or in a British possession having the power to register it.

In transmitting this report, Sir Michael Hicks Beach, while deferring to the opinion of Lord Salisbury, expressed his own as decidedly adverse to the Dent-Overbeck scheme.

Lord Salisbury on this deferred coming to a decision[¶] on the matter until the arrival in England of Messrs. Dent and Overbeck, who were expected in August.

On the 23rd May, 1878, a letter was received from Rajah Brooke, dated Brunei, April 11,[**] inclosing copies of two letters addressed by him to Mr. Treacher, protesting strongly, in the interests of the native population, against the Concessions obtained by

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[*] Mr. Treacher, No. 3, Consular; January 22, 1878. (Print, p. 107.)
[†] No. 1, Political. (Print, p. 109.)
[‡] Mr. Treacher, No. 5, (Consular; February 27, 1878. (Print, p. 114.)
[§] Colonial Office, April 20, 1878. (Print, p. 119.)
[‖] Colonial Office, April 24, 1878. (Print, p. 121.)
[¶] Memorandum by Sir J. Pauncefote, May 7, 1878, p. 129. Draft to Mr. Treacher, No. 6; May 28, 1878, p. 141. Drafts to Mr. E. Dent and Rajah Brooke, June 3, 1878, pp. 147 and 148.
[**] Print, p. 138.

Baron Overbeck, as calling attention to the fact that the cession of territory had been made by the Sultan of Brunei, who was nearly 90, and in his dotage, without the consent of other Chiefs, who were practically independent.

On the 22nd February, 1878,* the Spanish Consul at Singapore addressed a note to the Governor of that Colony, protesting against the proceedings of Baron Overbeck, and the assistance said to have been given him by Mr. Treacher.

It will be seen from the above statement that Messrs. Dent and Overbeck hold concession from two potentates—the Sultan of Brunei and the Sultan of Sulu.

As regards the first, neither the Spanish nor any other foreign Government, except, perhaps, the Dutch, have any concern in the matter; and it is merely a question whether Her Majesty's Government think it advisable to encourage the formation of a Company exercising powers of the nature described in the Concessions.

The advantages claimed for the scheme are that a rich and fertile country would thereby be brought under the management of a British Company, and a valuable field thus opened to British commerce.

The objections appear to be that, in the opinions both of Mr. Treacher and of Mr. Ussher, it would ruin the trade of Labuan; that at present there is nothing to prevent the transfer of this Concession to a foreign Company or a foreign Power; and that, supposing the Concession to remain in British hands, Her Majesty's Government might be drawn, by the action of persons over whom they have no control, into complications which it would be desirable to avoid.

Of course, however, the two latter objections might be obviated by the grant to the Company, on terms to be settled by Her Majesty's Government, of a Royal Charter, as urged in Messrs. Dent and Overbeck's memorandum of the 2nd December, 1878, of which a copy is appended.

But with regard to the territory ceded by the Sultan of Sulu an additional difficulty is caused by the claims of Spain.

The question of the Sulu territory in Borneo is a very complicated one. The limits of the territory are very uncertain, and the exact nature of the authority exercised over it by the Sultan of Sulu is equally so.

Mr. Treacher reported on the 22nd January, 1878, as follows:—

"The Sulus claim the country extending from Kimanis to Balik Pappan, south of the Sibuco River, on the ground that it was conceded to them many years ago for assistance rendered to a Brunei Sultan engaged in a conflict with a rival claimant to the throne. At present, however, the Sulus exercise authority only from and including Maludu to Balik Pappan; while the country between Pandassan and Maludu is comparatively independent of either Sovereign; and that between Pandassan and Kimanis is divided between the Sultan of Brunei and independent Brunei Chiefs."

In the Treaty between Spain and Sulu of 1836, the Spanish jurisdiction is spoken of as extending "from the western point of Muidanas to Palawan and Borneo, with the exception of Sandakan and other countries tributary to the Sultan of Sulu on the Continent of Borneo."

From the use of the word "tributary," it might be argued that the Sultan of Sulu did not possess absolute sovereignty over the territory in question, and on that ground his right to cede it might be questioned. This argument would, however, appear to tell as much against the cession to Messrs. Dent and Overbeck, as against the recent cession to Spain.

It is also to be noted that, as stated before, the original grant from the Sultan of Brunei to the American Company, and the recent one to Baron Overbeck, purported to cede the territories claimed by the Sultan of Sulu, which were then in the possession of Sulu Chiefs. This would seem to show that the Sultan of Brunei claims sovereignty over the whole of the territory in question, and such is stated to be the case in Messrs. Dent and Overbeck's memorandum of December 2, 1878.

But in 1764 these territories, including certain islands adjacent to the coast of Borneo, were ceded to England by the Sultan of Sulu; and one of these islands—Balembangan—was actually occupied by Great Britain, in virtue of this Treaty from 1769 to 1775, and again for a short time in 1803, when it was finally abandoned in consequence of the hostility of the natives.

This would seem to show that at that date the right of the Sultan of Sulu to cede his territories in Borneo was fully recognized by Great Britain.

Now, Spain has always maintained a claim to sovereignty over the whole of Sulu and its dependencies, founded on first discovery and ancient Treaties, and this right was confirmed by the Treaty between Spain and Sulu of July 31, 1851.

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* Mr. Treacher, No. 6, Consular; March 26, 1878. (Print, p. 131.)

Great Britain, however, also has had ancient Treaties with Sulu, and one dated the 25th May, 1849, contained a provision that the Sultan should not make any cession of territory to a foreign State, or to foreigners, or acknowledge the suzerainty of any other State, without the consent of Her Britannic Majesty.

This Treaty, unfortunately, was not ratified within the stipulated time, but, nevertheless, Her Majesty's Government refused to recognize the cession to Spain under the Treaty of 1851 of sovereignty over Sulu.

The discussion between Her Majesty's Government and Spain was then dropped for a long time; but in 1876 it was revived in consequence of the Spanish authorities at Manila claiming to prohibit trade with the Sulu Archipelago, and seizing vessels disregarding the prohibition.

The Law Officers of the Crown considered that the ancient Treaties between Great Britain and Sulu could not, for various reasons, be relied upon; but Her Majesty's Government, acting in concert with the Government of Germany, considered it expedient, as a matter of policy, to refuse to recognize the sovereignty of Spain over Sulu.

At length, after much discussion, a Protocol was signed at Madrid, on the 11th March, 1877, by the Spanish Minister for Foreign Affairs and the British and German Ministers, defining the position of Spain in the Sulu Archipelago, and securing freedom of trade and navigation therein to other nations.

In this Protocol all mention of the general claim of Spain to sovereignty over Sulu was carefully avoided, but it recognized the right of Spain to establish, in ports actually occupied, or that might be subsequently occupied by her, imposts and health regulations, and others under certain conditions during the actual occupation of such ports.

The Protocol contained no express stipulation that Spanish rights should not extend to Borneo, but care was taken to exclude any expression that might be construed as a recognition of such an extension.

Moreover, during the progress of the negotiations, the Spanish Minister for Foreign Affairs (Señor Calderon Collantes) spontaneously assured Mr. Layard[*] that, although Admiral Malcampo, then Captain-General of the Philippines, was resolutely in favour of extending the sovereignty of Spain over the whole of the vast Eastern Archipelago and over the northern part of Borneo, the Spanish Ministry had no designs whatever on Borneo, and limited the claims of Spanish sovereignty to "Sulu and the adjacent islands."

Unfortunately, this assurance was only given verbally; but, in order to place it on record as formally as possible, Lord Derby addressed a despatch[†] to Mr. Layard expressing the satisfaction of Her Majesty's Government at receiving it.

It was hoped that the above-mentioned Protocol of the 11th March, 1877, would have the effect of practically securing the interests of foreign trade in Sulu, without wounding the susceptibilities of Spain.

But it soon appeared that the Spanish Government was not content to let the matter rest on this basis. They set to work to negotiate a fresh Treaty with Sulu; and this Treaty, which was signed at Sulu on the 22nd July, 1878, most distinctly recognizes the sovereignty of Spain "in all the Archipelago of Sulu and in all its dependencies."

It also provides that "Sulu and its dependencies will hoist the Spanish flag in the towns and on board its vessels."

This Treaty was communicated confidentially to Her Majesty's Government on the 16th September, 1878,[‡] and formally on the 16th October, 1878, the Spanish Minister pointing out that it did not alter the Protocol of the 11th March, 1877.

The matter then remained for a long time under consideration.[§]

The Law Officers of the Crown expressed their opinion that Her Majesty's Government would not be justified in protesting against the Treaty as regarded its application to the Sulu Archipelago. That as the Treaty applied to Sulu *and its dependencies, if* the north-east coast of Borneo could be properly described as a dependancy of the Archipelago, it would, under the Treaty, pass under the sovereignty of Spain; that the rights ceded to Mr. Dent and Baron Overbeck should, if included in the territory put under Spain by the Treaty, be confirmed by Spain; but that an application for the favourable consideration of the Spanish Government would be tantamount to an admission of the right of Spain, which Her Majesty's Government might be unwilling to make.

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[*] Mr. Layard, No. 7; January 3, 1877. (Print, p. 91.)

[†] To Mr. Layard, No. 8; January 10, 1877. (Print, p. 97.)

[‡] Mr. West, No. 174, Very Confidential; September 16, 1878. (Print, p. 202.) Mr. West, No. 206; October 21, 1878. Print, p. 217.)

[§] Law Officers; February 3, 1879. (Print, p. 227.)

They therefore recommended that Messrs. Dent and Overbeck should be left to take their own course in their interest in a private undertaking out of Her Majesty's dominions.

While this matter was being considered Her Majesty's Government received intelligence that attempts had been made to enforce the hoisting of the Spanish flag at Sandakan and other points in Bornean territory, where Messrs. Dent and Overbeck's agents were established. They also received pressing applications from Mr. Dent, and from Sir R. Alcock, who presided at a meeting held to further the formation of a Company to work the Concessions, calling attention to these attempts, and urging the adoption of measures to recognise and protect the rights claimed under those Concessions.

The case of the applicants, and their wishes as to the action of Her Majesty's Government, are fully and clearly set forth in the printed "Statement and Application" addressed to Lord Salisbury by Mr. Dent and Baron Overbeck on December 2, 1878, a copy of which accompanies this memorandum.

In consequence of these representations, Mr. Treacher[*] was sent in a ship of war to Sandakan and other places in Borneo to protest formally against any attempt to hoist the Spanish flag in Borneo, but without in any way committing Her Majesty's Government to recognition or support of Messrs. Dent and Overbeck's claims.

Her Majesty's Government at length decided to protest against the Spanish Treaty, and on May 20, 1879, two despatches were addressed to Mr. West on the subject.

In the first, which was concerted with the German Government, Mr. West[†] was instructed to state that Her Majesty's Government looked upon the new Treaty as inconsistent with the spirit of the Protocol, and as a departure from the undertaking upon which the negotiations for the Protocol were based; that they had received with surprise and regret the announcement of this renewed attempt to assert Spanish sovereignty over Sulu; and that they formally reserved the right of declining to recognize the new Treaty, so far as its provisions purported to confer any rights not expressly conceded by the Protocol, and which might conflict with the interests of Great Britain.

In the second despatch, of which Mr. West was instructed to give a copy,[‡] Her Majesty's Government entered a formal protest against the claims of Spain to sovereignty over any part of Borneo; and expressed the hope that instructions would be sent to Manila without delay, which should put an end to this fresh complication.

The arguments used in this despatch were that the new Treaty had been described by Señor Silvela as only restoring to Spain the sovereignty held by her under previous Treaties, and that those Treaties applied only to the Archipelago; that the Spanish Government had on several occasions disclaimed any intention of including the territory in Borneo in their claims, and that if the sovereignty over these territories were to be assumed by any European Power, Great Britain had the prior claim under the cession of 1764.

On the 15th June Mr. West[§] reported that he had acted on this latter instruction, and that the Duke of Tetuan had pleaded ignorance of any attempt on the part of the Spaniards to hoist the Spanish flag at Sandakan or elsewhere on the coast of Borneo, and had assured him that explanations on the subject had been demanded by telegraph.

On the 2nd July, 1879, Mr. Dent communicated a copy of a letter[‖] addressed to Baron Overbeck on the 22nd July, 1878, by Don Carlos Martinez, Lieutenant-Governor of Sulu, notifying the nullification by the Sultan of the Concession to Messrs. Dent and Overbeck of Sandakan and its dependencies, which Señor Martinez goes on to claim for Spain under the Treaty signed on that day, and former Treaties.

This official document was sent to Madrid for communication to the Spanish

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[*] Mr. Treacher, No. 3; May 6, 1879. (Print, p. 253.)

[†] To Mr. West, No. 58; May 20, 1879. (Print, p. 243.)

[‡] Draft, No. 59; May 20, 1879. (Print, p. 244.)

[§] No. 89, June 15. (Print, p. 263.)

[‖] Print, p. 264.

Government,[*] with a request to be informed whether it had ever been brought to their knowledge, and what steps they proposed to take in the matter.[†]

On the 2nd September a further letter was received from Mr. Dent, representing the heavy expense which was being incurred, and pressing for an early expression of the views of Her Majesty's Government on the subject.

Her Majesty's Chargé d'Affaires at Madrid[‡] was accordingly instructed to press the Spanish Government for a reply to the above-mentioned communication, and for information as to the instructions which they had promised to send to the Captain-General of the Philippines on the subject.

The Spanish Minister for Foreign Affairs has replied[§] that an answer has been prepared, and will be forwarded to the Spanish Minister here as soon as Lord Salisbury returns to London and Mr. West to Madrid.

The Duke of Tetuan added that neither the late nor the present Spanish Cabinet entertained any intention of occupying the north-east coast of Borneo, but that the Spanish Government could not make any declaration renouncing the suzerainty which Spain exercised by right over the Sultan of Sulu and his possessions, which possessions extended, as was admitted, he said, by Her Majesty's Government, to the north-eastern portion of Borneo.

His Excellency further said that his information as to Spanish proceedings at Sandakan differed from that furnished to Her Majesty's Government, but he gave no particulars. They will no doubt be contained in the promised answer.

Mr. Dent wrote again on the 23rd September, pressing for a speedy decision, and expressing fears of an attack on the settlements by natives instigated from Manila.

In consequence of this representation, Lord Salisbury has requested the Lords of the Admiralty to cause the north-east coast of Borneo to be visited as often as possible by a British ship of war.

In addition to the Spanish claims the Dutch claim[‖] certain territories on the north-east coast of Borneo, and also hold that Great Britain is bound by the Treaty of 1824 not to extend her possessions in Borneo.[¶] They have expressed a doubt whether the Concession to Messrs. Dent and Overbeck does not infringe their rights; but their claims are very vague, and Her Majesty's Government do not recognise the Treaty of 1824 as applying to Borneo.[**]

H. C. E.

*Foreign Office, October 6, 1879.*

## Annex 21

## *MEMORANDUM ON THE POLITICAL, STRATEGICAL, AND COMMERCIAL ADVANTAGES TO GREAT BRITAIN OF THE NORTHERN PART OF BORNEO; AS WELL AS ON THE RIGHT OF HOLLAND, UNDER THE TREATY OF 1824, TO OPPOSE THE OCCUPATION OF ANY PORTION OF THAT TERRITORY BY GREAT BRITAIN*, BY SIR E. HERTSLET, DATED 4 NOVEMBER 1879

# BORNEO.

## *Memorandum on the Political, Strategical, and Commercial Advantages to Great Britain of the Northern Part of Borneo; as well as on the Right of Holland, under the Treaty of 1824, to oppose the Occupation of any portion of that Territory by Great Britain.*

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Parliamentary Paper, Foreign Office No. 266.

Mr. St. John; November 14, 1866.

Townsend's "Dictionary of Dates."

BORNEO being the largest island in the Indian Archipelago, and the largest in the world, if the Continent of Australia be excepted, and possessing, as it is known to do, vast resources of mineral wealth, including gold, diamonds, coal, antimony, quicksilver, tin, iron, zinc, and copper, and the usual products of the Indian Archipelago, has for a very long period been watched with a jealous eye by the English, the Portuguese, the Spaniards, the Dutch, and other nations, who have each in their turn endeavoured to form establishments thereon; but since the termination of the French revolutionary war in 1814, the Dutch and the English alone, among European nations, have been successful in maintaining establishments on the island.

By far the greater portion of the island is claimed by the Dutch as being within their sovereign jurisdiction, or under their protection, in consequence of Treaties which they have concluded with native Rulers (the exact claim will be alluded to hereafter). This portion of the island is called by them "Borneo," and is known by that name to other nations; but a large portion of the island on the west and north-west, which is seperated from the Dutch portion by a very high mountain range, formerly belonged to the Sultan of Brunei, and this portion is generally known as

**"Brunei," or "Borneo Proper," whilst another portion on the east and north-east belonged to the Sultan of Sulu, but these latter portions have undergone considerable alterations of late years.**

**The appellation of the name "Borneo" to the whole island has led on many occasions to misapprehensions, since, when Treaties have been concluded between the Sultan of Brunei and foreign countries, they have been called Treaties with "Borneo," whereas the more correct title would have been Treaties with "Brunei," or with "Borneo Proper."**

**Our Treaty with the Sultan of Brunei of the 27th May, 1847, for instance, was called a Treaty with "Borneo."**

**Treaty, United States and Borneo, June 23, 1850; State Papers, vol. xxxviii, p. 290.**

**Of late years, that is to say, since 1842, the Sultan of Brunei has parted with a very large portion of his territory, having ceded it to Rajah Brooke of Sarawak, whilst he has also ceded the Island of Labuan to Great Britain.**

**The present possessors of the Island of Borneo, therefore, are Holland, Brunei, Sarawak, Great Britain, and Sulu.**

During the French revolutionary war the Dutch possessions in the Eastern Seas, including Java and Sumatra, fell into the hands of the English; but when peace was restored, Great Britain, by the Treaty of the 13th August, 1814, restored to Holland the "Colonies, factories, and establishments which were possessed by her at the commencement of the late war, viz., on the 1st January, 1803, in the seas and on the Continents of America, Africa, and *Asia*, with the exception of the Cape of Good Hope and the Settlements of Demerara, Essequibo, and Berbice." The Island of Banca was also ceded by England to Holland, in exchange for Cochin and its dependencies on the coast of Malabar.

Very soon after this restitution, the British merchants began to entertain apprehensions that the Government of the Netherlands would not long continue to rest satisfied with the exaction of the same moderate duties which had been levied by Great Britain during her occupation of those Colonies; and early in the year 1817 these apprehensions became so strong, that shipments destined for Java were actually delayed until His Majesty's Government should have obtained from the Government of the Netherlands some explanation of its

**Foreign Office Memorandum: December 16, 1841.**

To Earl Clancarty, No. 2; January 24, 1817.
Earl Clancarty, No. 6; February 7, 1817.

intentions in this respect. The British Ambassador at the Hague, Earl Clancarty, having been instructed to demand these explanations, received from M. de Nagel, the Dutch Minister for Foreign Affairs, the assurance that no change was, for the time, contemplated; and that if any such change should become necessary, sufficient notice should be given to prevent British subjects from suffering loss by speculations already undertaken.

To Earl Clancarty, No. 13; August 12, 1819.
To Earl Clancarty, Private; August 13, 1819.
Earl Clancarty, No. 7; August 18, 1819.
Earl Clancarty, Private; August 18, 1819.
Earl Clancarty, No. 8; August 20, 1819.
Earl Clancarty, Private; December 3, 1819.

Baron Fagel; February 2, 1819.
To Baron Fagel; February 10, 1819.
Baron Fagel; February 12, 1819.
Baron Fagel; February 29, 1819.
Baron Fagel; March 5, 1819.
Baron Fagel; October 28, 1819.

But early in 1819 intelligence was received from Java that, notwithstanding the above assurance, heavy additional duties and restrictions had been imposed upon all foreign commerce, including British, whereupon Lord Castlereagh immediately requested the Dutch Ambassador at this Court to inform him why the promise of the Dutch Government had not been fulfilled, and why notice had not been given by the Dutch Government of their intention to effect an alteration so important to British commerce.

The Dutch Ambassador, in reply, merely observed that the regulations which had been adopted in no manner exceeded the measure of protection which every Government was bound to afford to the industry of its own subjects.

Lord Clancarty, No. 44; August 29, 1820.
Lord Clancarty, No. 48; September 5, 1820.
Lord Clancarty, No. 52; October 6, 1820.
To Lord Clancarty, October 30, 1820.
To Lord Clancarty, No. 14; December 13, 1820.

The conduct of the Netherland Government on this occasion, coupled with the accounts which daily reached England from the East, soon gave rise to a general conviction that it was the object of that Government to reintroduce in the Indian Archipelago that system of commercial monopoly which had been in force previous to the wars of the revolution, and not only to confirm that monopoly by Treaties with native Princes, but likewise to attain a political ascendancy which, by giving to them possession of the military and naval keys of the Straits of Malacca and Sunda, might ultimately place the British trade with China entirely in their hands. The British Government, accordingly, thought it necessary to come to some understanding with that of Holland with respect to the general relations of the two countries in those quarters, and they therefore proposed, in August 1819, that Conferences should be opened in London, in November following, for the purpose of amicably discussing and regulating the rights and interests of the two States in the Eastern Seas.

To Lord Clancarty, No. 13; August 13, 1819.

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Lord Clancarty was instructed, in making the above proposal, in the first place to endeavour to bring the Dutch Minister to come to some explicit avowal of the views and pretensions of his Government. "The question of preliminary importance was the extent of the rights claimed by the Court of the Netherlands in the Eastern Seas," and his Lordship was told that upon that question it was extremely desirable that he should bring M. de Nagel to some distinct explanation, endeavouring "to make him distinguish how much of the claim rested upon exact possession, how much upon concession from the native Princes, and by what limits in point of space, or by what rules of intercourse, the Netherland Government professed to consider the rights and authority of that State to be restrained or modified towards the subjects of other Powers frequenting those seas." His Lordship was at the same time directed clearly to explain to the Dutch Minister that there were two principles from which the British Government could, under no circumstance, be expected to depart: the one was that "they could not acquiesce in a practical exclusion, or in a mere permissive toleration of British commerce throughout the immense extent of the Eastern Archipelago; nor could they consent to expose the direct commerce of Great Britain with China to all the obvious dangers and disadvantages which would result, especially in time of war, from all the military and naval keys of the Straits of Sunda and the Straits of Malacca being exclusively in the hands of the Netherlands."

On these two principles being established, it was declared that the British Government would be found anxious to meet the Netherland Government more than half-way in an amicable adjustment of their mutual intercourse. This disposition, it was pointed out, had, on the part of the British Government, been sufficiently proved by the prompt and unsolicited disavowal by the Supreme Government in India of the unauthorized Treaties of Cession and occupations of territory which, under a mistaken view of his powers, were made by the Lieutenant-Governor of Bencoolen, but it was added that, if the Netherland Government could not be induced, so far at least to abstain from fresh military occupations as to remove every reasonable ground

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of alarm for the security of the commercial pursuits of Her Majesty's subjects in those seas, no forbearance on the part of the British Government alone could insure the continuance of their amicable relations in that part of the world.

Lord Clancarty was therefore told that, without pledging his Government to anything specific, he might make the Secretary of State feel that the Netherland Government, if they wished to preserve their permanent authority in the Eastern Seas without an active and ostensible contest for local occupation and supremacy on the part of this country, must leave open to Great Britain such commercial facilities, including the residence of commercial agents, as might satisfy the fair pretensions of Her Majesty's subjects; that if this was liberally and explicitly done, their respective dominions in the East might be a source of strength and of prosperity to each other; but if it was not, sooner or later the two Powers would come into collision, and both must inevitably suffer if it disturbed the friendship and harmony which ought to cement indissolubly their connection in every quarter of the globe.

This instruction was converted into a note, and officially presented to the Dutch Minister by the Earl of Clancarty.

The public instruction, of which the above is the abstract, was accompanied by a confidential one, in which Lord Castlereagh laid down in greater detail the limits of concession on the part of Great Britain in the negotiation about to be commenced. and 19. In this despatch his Lordship said, "better far would it be for His Netherland Majesty to hold Java, and any other of his old possessions, in direct colonial sovereignty, in which, of course, he would establish the system he thought the wisest, but which, after all, in his (Lord Castlereagh's) opinion, ought not in prudence to be one of exclusive trade; but that beyond these limits his object should be to have an understanding with Great Britain which might open the native commerce of the other islands to a fair and friendly competition without the establishment of any other preponderating military or political authority in those seas to counterbalance that which the Dutch then and long had exercised. This, it was stated, was the principle upon which the British Government were willing to treat with the Netherland Government. Lord Castlereagh added that the Dutch were mad if they did not catch at it whilst the feeling in England was everything they could wish; and that if they suffered the opportunity to pass by, how long, under the friendly policy of those in power, the mischief might be retarded, it was difficult to calculate.

In reply to the representations made by Lord Clancarty in pursuance of the above instructions, the Government of the Netherlands formally disclaimed and positively denied all intention of rendering British commercial interests in the Indian Archipelago in any respect dependent upon the Netherland Government; of seeking to possess themselves of the military or naval keys by which the Straits of Sunda and Malacca were commanded; or of entertaining so absurd a project as that of rendering Great Britain and every other commercial country their enemies by so mad an idea and impolitic an attempt as that of placing the commerce of the Indian Archipelago in a state of absolute dependence upon them. The Dutch Ministers, however, at the same time observed that, as far as the claims of Holland were founded on strict possession in acknowledged sovereignty, as in the case of Java and Banca, they did not conceive that there could be any doubt that such claims would be admitted as entire and absolute, to be regulated by their sole will and decision. To this Lord Clancarty, in conformity with his confidential instructions, made no objection. In reporting to His Majesty's Government the result of his various conversations with the Dutch Ministers, his Lordship, however, expressed the opinion that, when fairly examined, the pretensions of the Dutch did notwithstanding their professions, amount to a wish to attain commercial and political supremacy in the Indian Archipelago, inasmuch as they looked upon the native Princes, with whom they had Treaties prior to the war, as their feudatories, and deprecated their being considered independent; and that although the Dutch Government professed to disclaim any intention to exclude foreign commerce, they at the same time objected to the residence of the commercial agents of other Powers with those

**Lord Clancarty, No. 7; August 18, 1819.**
**Lord Clancarty, Private and Secret; August 18, 1819.**
**Lord Clancarty, No. 8; August 20, 1819.**

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Princes, thereby rendering the trade of all countries, in fact, dependent upon their own residents.

Lord Clancarty, No. 13; August 17, 1820.

In course of conversation with the Dutch Minister, Lord Clancarty observed that the Dutch had established themselves at Banjer-Massin, at Potiana, and at Sambas, &c.; and that, supposing the English were excluded from them, they might naturally endeavour to establish themselves at *Borneo* or elsewhere, when they again might be induced to place themselves more to the eastwards, and so the struggle might go on *ad infinitum*; to which the Dutch Minister replied, with regard to the first observation, that the Dutch had formerly occupied a settlement at each of the places named; and with reference to Borneo, that "a struggle of the kind which he (Lord Clancarty) deprecated, could not be carried to any considerable length, as stations would not be to be found at which it could be at all advisable to form such settlements."

Foreign Office Memorandum; December 16, 1841.

In the meantime, events had occurred in several parts of the Eastern Archipelago which undoubtedly greatly militated against the acknowledged rights of Holland, and of which the Government of that country had just cause to complain. It was, therefore, a matter of importance to them to ascertain how far the British Government might be disposed to support the acts of those of its functionaries in the East by whom those events had been brought about. The British Government on being applied to stated the acts alluded to to have been committed without authority from home; promised security against similar transgressions on the part of their agents; and proposed that these points should likewise be settled in the Conferences which they had suggested. The Netherland Government accordingly nominated, in December 1819, a Plenipotentiary to England (M. de Fagel), invested with full powers to settle the differences which had arisen between the two Governments.

Lord Clancarty, Private; December 3, 1819.

Foreign Office Memorandum; December 16, 1841.

The negotiation proceeded with the greatest harmony until August 1820, when it became necessary to suspend them for a time in order to obtain the opinion of the Governor-General of India on several points under discussion. Under these circumstances, and in order to prevent the possibility of future misunderstanding, the Plenipotentiaries of the two Governments thought it expedient to record in writing those points of the negotiation on which they were already agreed.

The following is an abstract of the Memorandum then drawn up, so far as it relates to the obligations up to that time contracted by Holland with respect to the question at issue:—

"It has been ascertained that the Government of the Netherlands distinctly and solemnly disclaim any design on their part to aim either at political supremacy, or at commercial monopoly in the Eastern Archipelago.

August 4, 1820.

"The Dutch Government deny that any Treaties have been made by them with native Princes, other than for the renewal of connections which subsisted, at the period when the Dutch were deprived by the war of their possessions in the Eastern Archipelago, with Powers at that time considered and admitted to be actual dependencies of the Dutch Indian possessions.

"They declare that in no Treaty which they have renewed since the peace is there any Article excluding the trade of British subjects from the ports of native Powers; and they profess their willingness to enter into stipulations for the future which shall preclude either the admission of any such Article into any Treaties which may be made by them hereafter, or the adoption of such a principle at their own ports.

"They profess to look for nothing but reciprocal indulgences and the most perfect freedom of trade between the subjects of the two Crowns and their respective dependencies in that part of the world."

It was on the understanding recorded in this Memorandum that the negotiation was resumed in November 1823. It does not appear from the correspondence what was the cause of its remaining so long suspended, nor are any Protocols of the discussions which ensued preserved in this Office. It was, however, stated in a Memorandum prepared in the Netherland Department of this Office in December 1841 that there could be no doubt that, on the part of Great Britain at least, the negotiation was resumed and the Treaty signed in the sense of the Memorandum above quoted; that this was, in fact, sufficiently evident from the expressions used in several of the Articles them-

Lord Clancarty, No. 113;
November 18, 1823.
Baron Fagel;
December 2, 1823.
Baron Fagel;
December 30, 1823.

Foreign Office Memorandum;
December 16, 1841.

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selves, and still more so from the contents of the notes which were attached to the Treaty by the then Plenipotentiaries of both parties; and it was observed, that the British note was by far the most precise, and that the less plain and intelligible language used in the Dutch note would justify a suspicion that at the very time of the signature of the Treaty the Plenipotentiaries of that Power were anxious to leave a door open for its future infraction.

On the 17th March, 1824, the Treaty was signed; and early in June of the same year intelligence was received in this country that in the month of February preceding an Ordinance had been issued by the Government at Batavia, raising the duties on all foreign wools and cottons (of the previous amount of which so much complaint had already been made) to 25 per cent. *ad valorem*, while Netherland manufactures of a like kind were admitted free of duty.

Foreign Office Memorandum; December 16, 1841.

Mr. Horsley Palmer, then Chairman of the East India Trade Committee, immediately addressed a remonstrance to the India Board, complaining of the Ordinance in question as a breach of the Treaty which had been signed. This was the commencement of a long correspondence upon the subject of the grievous hardships to which British subjects were exposed by the proceedings of the Dutch East India Government, in the course of which Mr. Canning declared that it was avowedly the intention of the Treaty of 1824 to place the commerce of the two nations upon a footing of equality and reciprocal benefit, and intimated that if the Netherland Government would not see the propriety of lowering the duties upon British manufactures imported into Java, so as to reduce the relative proportion of the duties levied on Dutch and British ships, to a rate more reasonable and more conformable both with the subject and spirit of the Treaty and the practice of the British Government, it was the intention of His Majesty's Government to revise the rate of duties now paid on all foreign manufactures imported into British India by Netherland vessels; but the Dutch Minister maintained that the exclusion of British produce and manufacture from the Dutch East Indies was compatible with the freedom of trade which, in the note attached to the Treaty, he acknowledged was the fundamental principle of that instrument, and which was one of those two points on which Lord Castlereagh had instructed Earl Clancarty to declare to the Netherland Government that Great Britain never would give way, and which would, if not conceded, lead to ultimate collision between the two countries. Although a positive promise was made that the scale of duties complained of should be revised, nevertheless complaints still continued to be made of the high duties levied on British goods imported into the Dutch Colonies; but as Borneo was not specially alluded to therein, it may now be advisable to proceed to a review of what has passed on that subject since 1824.

The arrangements of the Treaty of March 1824 may be divided into territorial and commercial.

Hertslet's Treaties, vol. iii, p. 284.

The *territorial* arrangements were the following:—

Holland ceded to Great Britain all the Netherland establishments on the Continent of India (Article VIII), the town and fort of Malacca and its dependencies, and further engaged not to form any settlements on any part of the Peninsula of Malacca, nor to conclude any Treaty with the native States therein (Article X). Holland, moreover, withdrew its objections to the occupation of Singapore by the English (Article XII).

Great Britain, on the other hand, ceded to Holland Port Marlborough and all the British establishments in the Island of Sumatra (Article IX); withdrew its objections to the occupation by the Dutch of the Island of Billiton and its dependencies (Article XI); and engaged that "no British establishment should be made on the Carimon Islands, or in the Islands of Battam, Bington, Lingin, or on any of *the other islands south of the Straits of Singapore*, nor any Treaty concluded by British authority with the Chiefs of those islands" (Article XII).

Whilst both parties agreed to give orders to their officers and agents in the East not to form any new settlement on any of the islands in the Eastern Seas without previous authority from their respective Governments in Europe (Article VI).

The *commercial* stipulations contained in the Treaty of 1824 were:—

**1. That the subjects of each of the Contracting Parties should be admitted to trade with the possessions of the other party on the footing of the most favoured nation.**

**2. That the duties to be levied on the subjects and vessels of the one party should always be in a specific proportion to the duties levied on the subjects and vessels of the other.**

**3. That no Treaty should hereafter be made by either party with any native Power in the Eastern Seas, tending expressly, or by the imposition of unequal duties, to exclude the trade of the other party from the ports of such native Power; and**

**4. That the free communication of the natives of the Eastern Archipelago with the ports of the two Governments respectively, or of the subjects of the two Governments with the ports of native Powers, should not be impeded.**

The Moluccas were, however, specially excepted from the operation of these engagements as long as the Dutch Government should see fit to continue the monopoly of spices (Article VII); and lest any difference of opinion should arise with respect to the islands to which the term "Molucca" should be considered to apply, it was recorded in an explanatory note attached to the Treaty that that term should be considered applicable to the cluster of islands which has Celebes to westward, New Guinea to the eastward, and Timor to the southward, but that these three islands were not to be comprehended in the exception.

Hertslet's Treaties, vol. iii, p. 294.

The intention of the Treaty of 1824 was, in fact, to define the actual state of possession and jurisdiction of the respective parties at the time of its conclusion, and to guard against any injury to the commercial interests of either party from the extension of the influence or dominions of the other.

Foreign Office Memorandum: December 16, 1841

Great Britain scrupulously performed her part of the contract, both by imposing moderate duties, and by totally abstaining from all hostile rivalry with the Dutch within the precincts of the Indian Archipelago; but the Dutch Government proceeded, notwithstanding the Treaty, to conclude Treaties with Jambi and other native Princes, as well as to impose heavy duties on British commerce, which led the British Government more than once to threaten to have recourse to retaliatory measures. But as the British Government, after many years' discussion, at length, by the Treaty of the 2nd November, 1871, "desisted from all objections against the extension of the Netherland Dominion in any part of the Island of Sumatra, and consequently from the reserve in that respect contained in the notes exchanged by the Netherland and British Plenipotentiaries at the conclusion of the Treaty of the 17th March, 1824;" the Netherland Government engaging on its part that British subjects, in respect of their trade and navigation, should be placed upon the footing of Dutch subjects in any native States in the Island of Sumatra which were then or which might thereafter become dependent on the Crown of the Netherlands; but no reference was made in this Treaty to the Island of Borneo.

Hertslet's Treaties, vol. xiii, p.

It may here be mentioned that, on the 26th August, 1842, a Treaty of Peace was concluded between Great Britain and China, which for the first time paved the way towards the establishment of commercial relations between these two countries.

About this time an English gentleman, Mr. James Brooke, visited the Indian Archipelago in his private capacity, and the attention of Her Majesty's Government was on various occasions called to his proceedings there; at length, in 1842, the Sultan of Borneo, in acknowledgment of Mr. Brooke's success in allaying internal dissensions among the native Chiefs and of his endeavours for the improvement of the native population, invested him with the hereditary government of the district of Sarawak. Frequent attempts were made by the friends of Mr. Brooke to procure the sanction and countenance of Her Majesty's Government to those proceedings. It was not, however, till the end of the year 1842, when several acts of notorious piracy on the north-west coast of Borneo, coupled with the captivity and ill-treatment of several British subjects, impressed upon Her Majesty's Government the necessity of adopting measures for the protection of the growing commerce with the Chinese Empire, exposed as that commerce was to the depredations of the pirate communities on that coast. It was under these circumstances that Sir E. Belcher, then about to proceed to the Eastern Seas, in command of Her Majesty's survey-

Foreign Office Memorandum
December 16, 1841.

Admiralty, October 24, 1844.

To Sultan of Borneo, November 1, 1844.

ing vessel "Samarang," was directed to repair to Borneo, to make inquiries on the spot as to the best means of affording that protection, and to enter into personal communication with Mr. Brooke. In March 1873 Sir E. Belcher reported the result of his proceedings; and inclosed a letter from the Sultan of Borneo to Her Majesty's Government, expressing his desire to enter into amicable relations with Great Britain, together with the heads of an Agreement for the extension of commercial intercourse and the suppression of piracy into which that Prince was disposed to enter. It now became of importance to decide in what manner this disposition on the part of the Sultan could be made conducive to the promotion of the object of Her Majesty's Government. Her Majesty's Government had for some time past considered that the establishment of a naval station on the north-west coast of Borneo had become necessary for the protection of trade and the suppression of piracy. Mr. Crawford, late Governor of Singapore, and other persons competent to give an opinion, had stated that the Island of Labuan possessed all the qualifications necessary for such a settlement; and accordingly Her Majesty's Government determined, early in October 1844, to send a naval officer to Borneo for the purpose of ascertaining the most eligible locality for such a station. As it was however felt that the co-operation of Mr. Brooke would be of the greatest advantage in any transaction with the native Chiefs relative to the cession of a station such as was required, and as, moreover, the whole tenour of that gentleman's conduct had been such as to entitle him to the full confidence of Her Majesty's Government, Her Majesty's Government saw fit, in replying to the overture made by the Sultan of Borneo, to appoint Mr. Brooke British Agent to that Prince and to the other native Chiefs, with the view to the ulterior negotiations which the desire of Her Majesty's Government to give effect to that overture might render necessary. A letter was accordingly addressed to the Sultan and to the other Rajahs of Borneo, expressing the gratification of Her Majesty's Government at the friendly disposition manifested by them, informing them that Mr. Brooke had been appointed to discuss the terms of the proposed arrangement; that full credence was to be given to whatever Mr. Brooke should communicate on behalf of Her Majesty's Government; and, that Captain Bethune, of the Royal Navy, had been sent to Borneo in order to place at Mr. Brooke's disposal the means of arriving at a full knowledge of the wishes and intentions of Her Majesty's Government.

To Mr. Brooke, No. 1; November 1, 1844.

This letter was forwarded to Mr. Brooke for presentation, and he was directed to accompany its presentation by suitable complimentary expressions and by the offer of certain presents which were sent to him for the purpose. The objects of Her Majesty's Government were stated to Mr. Brooke to be the establishment of a naval station at some point on the north-west coast of Borneo, capable of affording shelter to Her Majesty's ships of war and the trade in general, and possessing the necessary facilities for supplying fuel for Her Majesty's steamers. Mr. Brooke was further informed that as soon as his and Captain Bethune's Report on these matters should have been received measures would be taken for giving effect to any arrangement, if approved, into which he might have entered with the Sultan of Borneo, and also for carrying generally into execution any recommendations which he and Captain Bethune might have thought it their duty to make.

To Mr. Brooke, No. 2; November 1, 1844.

In furnishing Mr. Brooke with the above instructions it was felt to be desirable to make him fully acquainted with the opinion of Her Majesty's Government as to the nature and extent of the engagements by which the relations of Great Britain and the Netherlands in the Eastern Archipelago were regulated.

Mr. Brooke's attention was especially directed to the IIIrd Article of the Treaty of 1824, by which the Contracting Parties engaged that no Treaty concluded with any native Power should contain any Article tending, either expressly or by the imposition of unequal duties, to exclude the trade of the other party from the ports of that native Power; and to the IVth Article, by which the Contracting Parties engaged to give strict orders in no case to impede a free communication of the natives in the Eastern Archipelago with the ports of the two Governments respectively, or of the subjects of the two Governments with the ports belonging to native Powers: and Mr. Brooke was directed to take care that in any arrangements into which he might enter with native Chiefs, strict attention should be paid to those engagements.

With respect to certain limitations contained in other Articles of the Treaty, of the right of Great Britain to enter into Treaties with native States, Mr. Brooke was informed that those limitations *were not considered by Her Majesty's Government in any way to apply to Borneo*; and finally, Mr. Brooke was cautioned in establishing relations with native States to do so with such States only as were really independent, and in which the Netherland Government did not possess vested and acknowledged rights.

On the 1st November, 1844, the above despatches were forwarded to Mr. Brooke by Captain Bethune.

Parliamentary Paper, Foreign Office No. 267.

In the course of the same year (1844) another English gentleman, Mr. Erskine Murray, visited several districts of Borneo, and met, while proceeding up the River Koti, on the south-eastern coast of that country, an untimely death at the hands of the natives. On the 27th August, 1844, the Dutch Minister at this Court presented a note remonstrating against the proceedings of that gentleman in the district of Koti (which M. Dedel designated as a dependency of the Dutch residence of Banjermassing), as being a violation of the sovereign rights of the Netherlands; and whilst lamenting the imprudence of Mr. Murray in venturing *among a population the ferocity of which the Netherlands Government had hitherto found no means to control*, M. Dedel stated that it was the intention of the Dutch authorities to institute a searching inquiry into the circumstances of Mr. Murray's death, and to punish the guilty, but he at the same time protested against a supposed intention of the British authorities to avenge themselves the misadventure which had befallen Mr. Murray.

M. Dedel, August 27, 1844.

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To M. Dedel, November 2, 1844.

In reply to this communication, Lord Aberdeen, after having communicated with the Secretary of State for the Colonies, with the Lords Commissioners of the Admiralty, and with the Commissioners for the Affairs of India, informed M. Dedel that Her Majesty's Government had no knowledge whatever either of Mr. Murray's proceedings or of any intention on the part of the British authorities in India to undertake an expedition for the purpose of punishing his murderers; and M. Dedel was at the same time assured that, in any proceedings which the British Government might see fit to adopt on the coast of Borneo, either with a view to the suppression of piracy, or the punishment of outrages such as that to which M. Dedel had referred, *or for any other purpose, due care would be taken not to infringe on any vested and acknowledged rights appertaining to the Government of the Netherlands.*

**Admiralty, March 18, 1845.**

On the 10th November, 1944, shortly subsequent to the departure from England of Captain Bethune, Sir E. Belcher reported to the Lords Commissioners of the Admiralty that, having during his stay at Singapore obtained information that an European female had been seen in captivity at Bruné, the capital of Borneo Proper, proceeded to that port with the "Samarang" and the East India Company's steamer "Phlegethon," to investigate the matter. Having touched at Sarawak, he found that the Rajah Muda Hassin, then residing at that port, was likewise desirous of proceeding to Bruné, and he accordingly gave him a passage, and was accompanied by Mr. Brooke.

On his arrival at Bruné he found the report of the captivity of the English female to be entirely untrue; and although at first much fear was shown at his arrival, confidence was soon restored, and Sir E. Belcher was entrusted on his departure with a letter from the Sultan and Muda Hassin to the Queen, again expressing their desire to gain the friendship of Her Majesty, and her aid for the suppression of piracy and the encouragement and extension of trade, and offering, with this view, to cede to the Queen the Island of Labuan and the adjacent islets, on such terms as might thereafter be arranged by any person duly appointed by Her Majesty. They further expressed their opinion that an English settlement on Labuan would be of great service to the natives of the coast, and would draw a considerable trade from the northward and from China; and the Sultan and Mudir Hassin pledged themselves, should the Queen of England decide upon the measure, to afford every assistance to the British authorities.

No decision was then taken with respect to this offer; because Her Majesty's Government were desirous first to receive Mr. Brooke's and Captain

Bethune's reports as to the capabilities of Labuan before they decided on its occupation.

Dedel, April 21, 1845.

On the 21st April, 1845, M. Dedel drew the attention of Her Majesty's Government to an attack made by Sir E. Belcher on some boats belonging to the Sultan of Tidore, a vassal of the Netherlands, on the western coast of Gilolo, and requested that stringent instructions should be addressed to Her Majesty's Naval Commanders to use more caution.

To M. Dedel, May 9, 1845.

In reply to M. Dedel's note, the Earl of Aberdeen informed that Minister that instructions to the effect above adverted to would be forwarded to Her Majesty's commanders in the Eastern Seas, but that the Dutch Government must not expect that in districts to the sovereignty or suzeraineté of which the Dutch Government laid claim, but in which they could not afford British subjects engaged in lawful pursuits the necessary protection, those subjects would abstain from protecting themselves.

Mr. Howard, No. 38; July 11, 1845.

M. Dedel, November 24, 1845.

In this year certain active steps were taken by Her Majesty's ships on the Indian station for the suppression of piracy, into the details of which it is unnecessary here to enter; but they attracted the serious attention of the Netherland authorities in the Eastern Seas, and, immediately after the occurrence of the events which ended in the death of Mr. Erskine Murray, an expedition was sent by the Governor-General of Netherland India to the River Koti, with a view, as was stated by the Java papers, of renewing the Treaties which the Netherland Government had formerly made with the Sultan; and on the 24th November, 1845, the Netherland Minister at this Court communicated to Her Majesty's Government the result of the Dutch inquiries into the death of Mr. Murray.

Foreign Office Memorandum, August 1, 1846.

It may be here observed that whereas the Dutch Minister, in his note of the 27th August, 1844, had already at that time protested against Mr. Murray's proceedings, as an infringement of Dutch sovereign rights, those rights were only acknowledged by the Sultan of Koeti in the following month of October.

M. Dedel, December 2, 1845.

On the 2nd December, 1845, M. Dedel addressed another note to Her Majesty's Government, adverting to the proceedings of the British authorities and of other British subjects in the Eastern Seas as being contrary to the Treaty of 1824, and suggesting that, in order to allay the ill-feeling engendered in Holland by these proceedings, the British Government should disavow all intention to exercise political supremacy in the Eastern Archipelago, in the same manner as had been done by the Netherlands on the occasion of the signature of the Treaty of 1824. The specific acts of which the Netherland Government complained were—

1. The acts of Mr. Murray.

2. Certain acts of the crews of British vessels, ostensibly employed in scientific pursuits, but having for their real object the extension of British influence.

3. The acts of Mr. Brooke, in his character of a private British subject.

4. That gentleman's subsequent acts in his character of British Agent at Borneo; and

5. Finally, the measures adopted by Her Majesty's naval forces for the suppression of piracy.

To M. Dedel, December 10, 1845. Foreign Office, No. 582, Confidential.

In reply, M. Dedel was informed that, as Her Majesty's Government did not admit that either the letter or the spirit of the Treaty of 1824 had been infringed by their proceedings with respect to Borneo, they must decline to make a declaration which would involve an admission that the Netherland Government was justified in its views of the matter; that *there was nothing contained in the Treaty to prevent either the one or the other party from establishing relations with the native Chiefs of Borneo;* that if such had been the intention of the Treaty of 1824, it would assuredly have been distinctly announced with respect to Borneo, as it had been with respect to other portions of the Eastern Archipelago; that the limitation contained in the XIIth Article with reference to the *islands south of the Straits of Singapore* could not apply to Borneo; and that, consequently, Her Majesty's Government would be perfectly at liberty, as far as the Treaty of 1824 was concerned, to form a *settlement even on the coast of Borneo itself.*

With reference to British interests in those seas, Lord Aberdeen then said:—

"After the termination of the late differences between Her Majesty's Government and the Government of *China*, and the conclusion of the Treaty between the two countries, by which increased facilities were afforded to the trade, not only of

British subjects, but of all nations, it became an object of vital importance to extend to that trade the additional protection of which it would stand in need against the unceasing aggressions of the pirate communities on the coast of Borneo. For some time it had become evident that the measures previously taken by Her Majesty's Government were insufficient for the purpose; and as those adopted by the only other European Governments possessed of any convenient means of action in the Eastern Seas, namely, the Governments of the Netherlands and Spain, appeared to be equally, if not more ineffectual, it became the duty of Her Majesty's Government to secure to the trade of Her Majesty's subjects, by new and more active measures, the protection which the latter have a right to expect at their hands. A communication received through Mr. Brooke from the Sultan and the principal Chiefs of Borneo appeared to Her Majesty's Government to afford a favourable opportunity for effecting this object. In the letter addressed on this occasion by the Sultan to Her Majesty's Government, a desire is expressed to enter into relations of amity and commerce with Her Majesty's Government, and a readiness to concert measures with them towards the suppression of *piracy* and the protection of *trade*."

After replying to the other complaints of the Dutch Minister, the fullest information was, in the next place, given to M. Dedel with reference to the motives which led to Mr. Brooke's appointment, the transactions with the Sultan of Borneo which had taken place, the intentions of Her Majesty's Government with respect to the establishment of a naval station on the north-west coast of Borneo, and the offer by the Sultan of the Island of Labuan for that purpose.

M. Dedel, March 20, 1846.

On the 20th March, 1846, M. Dedel replied in a very long letter to the Earl of Aberdeen's note of the 10th December preceding.

Foreign Office, No. 116, Confidential.

In this note M. Dedel gave an historical sketch of the events which, according to the opinion of his Government, led to the negotiation of the Treaty of 1824, and founded upon that sketch the conclusion that the main object of that Treaty was not only to separate their respective territories and define the limits of their possessions in the East, but likewise, to prevent the possible recurrence of dissension, to establish two principles, "cession en entier par l'un des deux à l'autre de toutes les parties de territoire jusque-là possédées en commun; renonciation réciproque à toute communauté territoriale pour le futur;" and that, "si l'île de Bornéo n'est pas nommée dans le Traité de 1824, cette omission ne prouve autre chose sinon qu'à cette époque elle n'était pas le théâtre d'une occupation commune, &c."

Finally, M. Dedel, after expressing the hope that his previous observations might have convinced Her Majesty's Government that any British settlement on the coast of Borneo could not be considered by the Government of the Netherlands otherwise than as an infraction of the Treaty of 1824, drew the attention of Her Majesty's Government to the complications likely to result from the settlement of Mr. Brooke at Sarawak, which, though not a British settlement in the ordinary sense of the term, was such a one for all practical purposes; and might, as such, expose the Netherland Government to a repetition of the complications which it was the intention of the Treaty of 1824 to put an end to; and M. Dedel suggested as a remedy for these inconveniences a mutual understanding on these matters, in accordance with the principles of the Treaty of 1824.

To M. Dedel, May 4, 1846.

In reply to M. Dedel's note, Lord Aberdeen expressed the inability of Her Majesty's Government to acquiesce in the principle which the Netherland Government endeavoured to deduce from the Treaty of 1824, namely, that there should be no joint occupation for the future of different portions of one and the same country. First, because, if it had been the intention of laying down a principle so important, and one capable of being so distinctly expressed, it would not have been allowed to remain matter for inference or speculation. Secondly, because, under the circumstances, it would have amounted to a *renunciation by Great Britain of every extension of dominion or influence in those seas, and to a power on the part of the Netherlands to extend Netherland possession and influence without limit*, and would thus have led to the establishment of the political supremacy which, on the occasion of the signature of the Treaty of

1824, the Netherland Government had been called upon to renounce.

Without examining the accuracy of the historical sketch given by M. Dedel, the Earl of Aberdeen merely observed that the irregularities which occurred previously to the conclusion of the Treaty were the consequence of the attempt made by Holland to reintroduce into the Indian Archipelago the old system of commercial monopoly; and M. Dedel was reminded that, as early as 1819, Lord Clancarty was instructed officially to declare to the Dutch Government that "the British Government could not acquiesce in a practical exclusion, or in a mere permissive toleration of British commerce throughout the immense extent of the Eastern Archipelago;" that, during the course of the negotiation, the Dutch Plenipotentiaries had been repeatedly obliged to give assurances to this effect; and it was in this sense that the commercial portion of the Treaty was ultimately concluded, as was sufficiently proved by the Preamble, by the IIIrd and IVth Articles, and by the notes exchanged on the occasion of the signature; that had the principles of commercial freedom thus recorded been carried into full effect by the Dutch Government, the jealousy of Holland which was then prevalent in Great Britain would not have existed, and Her Majesty's Government would have seen with satisfaction any legitimate and reasonable extension in those regions of Netherland influence and possession. But, his Lordship asked, what had been the course pursued by the Netherland Government since the Treaty? Onerous duties had been levied on British commerce; arbitrary valuations had been made on the goods subject to duty; increasing such duty to an exorbitant amount; distinctions had been made, not recognized by the Treaty, with respect to importations from the eastward and the westward of the Cape of Good Hope; ports into which British commerce had formerly been freely admitted had been closed; Treaties had been entered into with native Powers restricting the intercourse of British subjects with those Powers, and substituting the onerous and differential duties of the Netherland Tariff for the moderate and equal duties formerly levied upon all European

See p. 4.

nations alike; all applications for the sanction of the Netherland Government to the appointment of British Consuls had failed; and if the earnest and unceasing representations of Her Majesty's Government had, with respect to some of the above heads of complaint, provoked a tardy and insufficient reparation, the principal causes of dissatisfaction had remained unchanged.

The Earl of Aberdeen, in the next place, assured M. Dedel that Her Majesty's Government entirely concurred in the principle which he had laid down as to the obligation of a party aggrieved within districts under the sovereignty or suzeraineté of an European Power to apply in the first instance for redress to that Power; and that if M. Dedel's observation applied to the last paragraph of the note which the Earl of Aberdeen had addressed to him on the 10th December preceding, and which announced the intention of Her Majesty's Government themselves to protect British subjects within districts to the sovereignty or suzeraineté of which the Netherlands laid claim, but within which the Netherland Government was unable to afford that protection, such paragraph was intended to apply exclusively to contingencies such as those specified by M. Dedel, and more especially to that passage of M. Dedel's note of the 27th August, 1844, in which he admits the "utter inadequacy of the efforts of the Netherland Government to control the ferocity of the native inhabitants" within a district to the suzeraineté of which the Netherland Government then laid claim, and within which a British subject had at that time found an untimely grave. See p. 15.

The Earl of Aberdeen, in the next place, declined to enter into engagements for joint action in the suppression of piracy; a course which, in his opinion, far from facilitating the attainment of this object, would make the movements of the naval forces of either party dependent on those of the forces of the other, and might, by crippling their independent action, be productive of great inconvenience in cases where rapid and decisive measures should be required for the repression of wrongs.

Finally, the Earl of Aberdeen expressed his great regret that, as Her Majesty's Government and the

Government of the Netherlands were still at variance with respect to the principles of the Treaty of 1824, the understanding on the basis of those principles suggested by the Dutch Government, with a view to obviate the inconvenience which they anticipated from the possession of Sarawak by Mr. Brooke, would for the moment be impracticable; and declared that Her Majesty's Government had, after mature consideration, decided that *nothing contained in the Treaty of 1824 precluded the formation of British Settlements in that part of Borneo in which the Netherlands did not possess acknowledged rights;* • p. 14. *that M. Dedel had admitted that Holland possessed no such rights on that part of the coast of Borneo to which the present discussion related; and that although Her Majesty's Government had no intention at that moment of availing themselves of that circumstance for the purpose of establishing there a Colony of the Crown, they could not allow it to be supposed that if circumstances should render such a step expedient; they in any way considered themselves precluded from its adoption.*

Here the discussion terminated for a time.

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9. August 17, 1858.
10. November 4, 1858.

In August 1858 Consul-General St. John reported from Brunei that he had been credibly informed that the *Spanish*-Government fully intended to take possession of the east coast of Borneo; and in a later despatch he suggested that that part of the island which was situated to the north and west of the great Mountain of Kini Balu (a mountain of about 14,000 feet) deserved the attention of Her Majesty's Government, more particularly as the dominions of the East India Company had just previously passed under the direct control of the Crown. He pointed out in what manner it was admirably adapted for a convict station; but in addition to that advantage, he said it offered others that were eminently national; that "it gave us a good position; that its splendid harbour commanded the China Seas; that it would stop every endeavour to shut us out of the Archipelago, and would, he was assured, soon become a flourishing Settlement; that Chinese and other settlers might be admitted on certain conditions; and that, if the scheme were well carried out, the local revenues would soon pay for all local expenses." He then observed: "If

Sir James Brooke, with his private resources, could make Sarawak pay,* the Imperial Government could make a second Java of the north-west coast of Borneo; that the country required opening up; that there was not a road anywhere, though the jungle, being cleared away, rendered their formation easy, particularly over the plains that bound the sea coast; that, as a coffee-producing country, it would rival Ceylon; and that it was very probable that the cotton cultivation might be greatly extended, and might flourish."

Mr. St. John then alluded to the fact that the Sulus had formerly made a grant to the East India Company, and he stated that it was generally considered that the limits extended from the River Kimarias on the north-west coast to Cape Unsang on the east coast.

A detailed Report of the north-west coast of Borneo was included in this despatch, which, I think, it would be convenient at this moment to print in a separate form.

**No. 9, August 17, 1858.**
**No. 11, November 5, 1858**

Mr. St. John also drew attention to the fact that the Spaniards had taken possession of Balabak, a Bornean island on the north of Borneo, and that there was an intrigue going on for the purchase of the fine harbour of Gaya, which would effectually close the north of Borneo; that the Vicar-Apostolic of the Borneo Catholic Mission (Signor Cuarteron) had offered 10,000 dollars for it, but that the Chief stated that he had refused to sell it, as he had no right to part with a district without the consent of the Sultan, and that the Sultan, by Treaty, could not give his consent without the previous sanction of the British Government (alluding to the Xth Article of the Treaty between Great Britain and Brunei of 1847).

**1859.**

Mr. St. John, however, stated that he had heard that M. Cuarteron had offered 13,000 dollars for it, and that he felt assured that he was attempting to possess himself of the harbour either for himself or the Spanish Government; and he again drew attention to the necessity of checking the advance of the Spaniards, who were encroaching on the territory of the Sultan of Borneo, and suggested that they should be required to withdraw from the Island of Balabak.

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* The latest printed Report on the trade of Sarawak was sent home by Consul-General Usher in 1877. Commercial Reports, No. 1, 1878.

The Spanish Minister for Foreign Affairs, however, informed Mr. Buchanan that Spain possessed the north of Borneo up to the time of the French Revolution, and that it was the intention of the Spanish Government shortly to occupy an important position on the north coast of Borneo.

No. 1, February 4, 1859.

A copy of the despatch containing this assertion was sent to Mr. St. John, who replied to it as follows:—

"The seizure of Balabak was unjustifiable, but the proposed annexation of the north of Borneo would be a violation of Treaties. There is not a shadow of a doubt that the north of Borneo to Cape Unsang is ours; that it was ceded to us by the Sulus; that we occupied a portion on two occasions (in 1774 and in 1803); that the cession is acknowledged to this day by the Sulus; that on our occupation no Spanish forts existed, and that none have since been built.

"The Minister's assertion, that Spain possessed the north of Borneo up to the time of the French Revolution, is simply the result of a warm Spanish imagination.

"Since our last abandonment of the north of Borneo, the Sultan of Brunei has gradually acquired a nominal sway as far as Maludu Bay, which formerly belonged to his ancestors, and now he strongly protests against the English allowing the Spaniards to seize these territories, as he conceives that, after binding himself not to cede any portion of his kingdom without the consent of the British Government, he is under British protection, and I imagine his view of the question is the only tenable one.

"It appears to me that the affair is a simple one; from Cape Unsang to Maludu Bay is positively British territory, and from Maludu Bay to Sarawak may be considered as Borneo territory under British protection. Were Spain informed that this was the only view of the question that Britain could allow it would probably check her designs. Already at Balabak she is showing her monopolizing spirit by stopping every prahu that attempts to pass on its way to Labuan and Brunei, and the sooner she is required to quit this island the better for British trade.

"It should not be forgotten that the French are acquiring the western shores of the China Seas, and that, should Spain be allowed to seize the north of Borneo, she will possess the eastern shore, besides commanding all the important eastern straits."

The Treaties alluded to in this despatch are no doubt the following:—

(1) The Agreement of the 24th February, 1763; (2) the Agreement of the 14th April, 1763; (3) the Grant of 1764; (4) the Treaty of the 28th September, 1764; and (5) the Grant of 1769.

The following are extracts from these documents:—

### *I.—Agreement of the 24th February,* 1763.

He (the King of Xolo) offers to cede to the Honourable Company such part of his own dominions on Xolo or Borneo as they may choose to erect forts or factories upon for the security of their trade, to confirm the Treaty of Commerce between Mr. Dalrymple and the present Prince, to give the English the exclusive privilege of trading free of all customs, and to enter into an alliance, offensive and defensive, for the mutual protection of their possessions.

### *II.—Agreement of the 14th April,* 1763.

#### ARTICLE I.

The King of Xolo and his son Prince Israel, for themselves and their successors, for ever cede to the Honourable United Company of Merchants of England trading to the East Indies such part or parts of the Island of Xolo, or the territories thereon dependent, as they may choose to erect forts or factories upon, and they will assist the English therein as much as lies in their power.

### *III.—Grant from the Sultan of Sulu.* 1764.

I, Sultan Mahomed Allumodin, son of Sultan Mahomed Badarodin, who govern this Island of Sulu and all its dominions, do acknowledge to have sold to the English Company my right to the part of Borneo from Towson Abai to Kumaumes, the Island of Palavan, and all the other islands to the northward of Borneo. In return for the benefits I have received from the said Company I give up to them all my pretensions and rights, and those of my successors, to these lands and islands, and all that belong to them, and ratify to the Company the full possession of Balambangan. The said Company may give the government of these lands and islands to any of my sons and relations, if the said Company think proper.

### *IV.—Treaty of the 28th September*, 1764.

Art. I. The English shall have leave to purchase a proper spot of ground for a factory and gardens, of which the Sultan engages to secure them in the unmolested possession for ever.

Art. III. If any Chinese or others shall choose to settle under the English jurisdiction, they shall have leave to do so, and be granted under the English, and at the application of the Chief, sufficient ground for their habitation, and shall be considered as subject only to the English.

### *V.--Grant from the Sultan of Sulu.* 1769.

I, Sultan Mahomed Allemodin, son of Sultan Mahomed Badarodin, King of the Island of Sulu and all its dominions, do acknowledge and hereby confirm to have sold to the English East India Company all my right and title to the north part of Borneo, from Kimanis on the west side, in a direct line to Towson Abai on the east side thereof, with all the lands, places, and people, &c., within those limits, and also all the islands to the northward of the said Island of Borneo, as Balambangan, Palawan, Banguey, Balabak, Monnach, and all the other islands adjoining, as well on the north as east and west sides of those parts of my dominions. All this I do and confirm in consideration of the benefit which I have received from the said Company.

To them, the said Company, I also give and grant all my pretensions and rights, and those of my subjects and successors, to those lands and islands, &c., as aforesaid, with everything in anywise belonging unto them.

**I also grant and confirm unto the said Company a free and exclusive right and title to the trade and commerce of all my dominions, and to them only I grant the liberty of fishing for pearls in any and through every part thereof without any molestation whatsoever.**

**Moreover, I oblige myself to go in person, or to send some proper person, as it may be required, to the above-mentioned islands and places, to bring their respective people under due subjection to the aforesaid Company.**

A copy of the above-mentioned despatch from Mr. St. John was sent to Mr. Buchanan at Madrid, and he was told that he would perceive that Mr. St. John considered that the steps supposed to be contemplated by the Spanish Government in the annexation of territory in the north of Borneo would be in violation of the terms of the Treaty between this country and Borneo, and that he would accordingly take an opportunity of calling the attention of M. Calderon Collantes to this subject; and, in explaining to his Excellency the nature of the rights which were secured to Great Britain by Treaty, he would state that Her Majesty's Government could not consent to any proceedings of the Spanish authorities which would be inconsistent with those rights.

Mr. Buchanan, accordingly, sought an interview with the Spanish Minister, and handed to him a Memorandum, of which the following is a copy:—

"The seizure of Balabak by Spain was unjustifiable, where the authorities now stop every prahu that attempts to pass on its way to Labuan and Brunei, but the annexation of the north of Borneo, alleged to be contemplated, would be a clear violation of Treaties. There is not the shadow of a doubt that the north of Borneo to Cape Unsang is British; that it was ceded to Her Majesty by the Sulus; that Great Britain occupied a portion on two occasions (in 1774 and in 1803); that the cession is acknowledged to this day by the Sulus; that on the British occupation no Spanish forts existed, and that none have since been built.

"The idea, therefore, said to be entertained at Madrid, that Spain possessed the north of Borneo up to the time of the French revolution, is entirely unfounded.

"Since the last abandonment of the north of Borneo by Great Britain the Sultan of Brunei has gradually acquired a nominal sway as far as Maludu Bay, which formerly belonged to his ancestors; and now he strongly protests against the English Government allowing Spain to seize these territories, as, after binding himself not to cede any portion of his kingdom without the consent of the British Government, he considers himself to be under British protection.

"The affair is a simple one: from Cape Unsang to Maludu Bay the country is positively British territory; and from Maludu Bay to Sarawak it may be considered, under the Xth Article of the Treaty of 1847 between Great Britain and the Sultan of Borneo, to be Borneo territory under British protection; and Her Majesty's Government cannot, of course, consent to any proceedings on the part of the Spanish Government which would be contrary to the rights enjoyed by Great Britain under the said Treaty.

"It is said that Spain wishes to purchase the harbour of Gaya, which would effectually close the north of Borneo. The Chief states that he refused to sell it; and he has no right to do so without the consent of the Sultan; and the Sultan, by Treaty, cannot give his consent without the previous sanction of the British Government."

In consequence of further Reports received from Mr. St. John respecting the proceedings of the Spanish authorities off the coast of Borneo, the following further Memorandum was left by Mr. Buchanan with the Spanish Minister for Foreign Affairs:—

Mr. St. John, No. 4, June 21, 1859.

"It has come to the knowledge of Her Britannic Majesty's Government that the Island of Tulayen (Tulcian), near Sulu, was occupied about five months ago by a Spanish force of 200 men; and it is also believed that Spain has the intention of taking possession of the north coast of Borneo.

"Constant complaints are also made to the Agents of the British Government against the Spanish possession of Balabak, and that Spanish gun-boats molest the trade between the western coasts and the countries to the east.

"Several prahus have been seized on the pretext that they had no passes, but in most of the rivers there is no authority competent to issue these documents; and it appears that the passes themselves do not always serve as a protection, as cases have occurred of prahus being seized which had passes from Labuan."

In August 1860 Mr. St. John sent home another Report, in which he thus alluded to the importance of the north-west coast of Borneo as a strategical position:—

Mr. St. John, August 9, 1860.

"A glance at the map will show the great value of the north-west coast of Borneo: it commands the China Seas. It must be remembered that the French are strongly fortifying Saigon, on the southern portion of the Cambodian peninsula; there they have met with none of the resistance encountered at Turon Bay. A glance at their probable future would be interesting, but out of place in this paper. The Spaniards have all the Philippines, and have lately extended their power to Balabak, off the north of Borneo. With the French on one side and the Spaniards on the other, the China Sea will be closed against us if we lose the north-west coast of Borneo. The opinion that the importance of these places is nothing if we do not lose our naval preponderance is, I think, a mistake. During the last war Java required a large army, a fleet, and an expenditure of millions to subdue it. The north-west coast of Borneo contains five* harbours of great value—four of them provided with coal, and easily defensible. It possesses one of the finest coal beds in the world."

Danger of foreign occupation. Consul Ricketts, No. 13; February 1, 1865.

And with regard to the dangers of foreign occupation of the north-west coast of Borneo, the following observations were made by Consul Ricketts (Mr. St. John's successor) in 1865:—

"The directions from which any danger might arise from without would be either from the side of Spain, which is endeavouring to extend its influence from the Manillas to the north-east coast of Borneo;

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* 1. Gaya Bay.
2. Labuan.
3. Brunei Entrance.
4. Rajang } Sarawak.
5. Muratabas }

from France, which, holding an advantageous position in Cochin, and endeavouring to gain power in Cambodia, would add materially to its influence in the China Seas by obtaining possession of Sarawak and the northern coast of Borneo; or from the Government of the Netherlands, which, if once installed at Sarawak, would have little difficulty in establishing itself, if not in the interior, certainly in the littoral of the whole north-eastern coast, which, together with its other settlements in Borneo and the adjacent islands, would give it the command of the greatest part of the commerce of the East Indian Archipelago. Whether the two former States are ever likely to turn their attention especially to this part of the coast it is impossible to say, but it is generally believed that, at the demise of the Rajah, the latter will not be backward in attempting to carry out its traditional policy of annexation. The Government of the Netherlands would not easily succeed in consolidating its power and reducing the people of the interior to subjection, but it could, without much difficulty, blockade the mouths of the principal rivers, and thus destroy the commerce of the country. It is needless to remark that such a project would not even be contemplated on the part of the Government of the Netherlands were it once known that this country formed a portion of the colonial possessions of Great Britain.

"It might also be remarked that an attack from without on the part of any foreign Power would not meet with much chance of success were the country once in the hands of a Government like that of Her Majesty, able to take a few precautionary measures for its defence, and armed with a respectable fleet of gun-boats."

To Lord Odo Russell:
January 17, 1876.

No. 3159, Confidential, p. 114.

In 1873, however, the Spaniards reasserted their dominion over Sulu; a long correspondence ensued, and at length Lord Derby, in a despatch to Lord Odo Russell, said that Great Britain had rights under Treaties with Sulu dated 1761, 1764, and 1769, but that those Treaties *must be considered as having lapsed.*

1860–1875.

In 1860 and 1865 proposals were made to the British Government to accept the Protectorate over Sarawak, but they were declined. Nevertheless in 1869, and again in 1874, similar proposals were made by Rajah Brooke that the British Government should exercise a protectorate No. 2532, Confidential. over Brunei; and in July of the latter year Rajah July 16, 1874. Brooke forwarded to the Foreign Office a Memorandum on the subject of the north-east coast of Borneo, "in the earnest hope that some steps might be taken to prevent foreigners occupying those rich lands, the loss of which, with the Sulu and so many other parts, might materially affect the trade of the British merchant in the East;" and he accompanied his proposal with a suggestion that, in the event of Her Majesty's Government having no intention of taking active measures to develop the resources of the north of Borneo, he might be allowed to open negotiations with the Sultan of Borneo upon the subject.

His proposal was, however, declined, and he was Colonial Office; October 23, 1874. informed that Her Majesty's Government could not view with favour any very considerable extension of his own territories in Brunei.

### *Résumé.*

It would therefore appear from the foregoing—

That all the Netherland Colonies and Possessions in Asia which had been conquered from the Dutch during the French Revolutionary War were (with certain exceptions) restored by the Treaty of the Page 2. 13th August, 1814.

That soon after the conclusion of that Treaty repeated complaints were made to the British Government against the heavy duties and restrictions Page 2. which were imposed by the Dutch East India authorities on British trade.

That in 1819 proposals were made by the British Government that negotiations should, on certain Page 3. conditions, be held in London for the purpose of coming to an amicable arrangement with regard to the British trade in the Eastern Seas.

That those conditions were: (1) that Great Britain could not acquiesce in a practical exclusion Page 4. or a mere permissive toleration of British commerce in those seas; and (2) that she could not consent to allow the Dutch to possess the naval and military keys of the Straits of Sunda and Malacca.

That the Dutch entered into negotiations for the

Page 6.

conclusion of the proposed Treaty on the distinct understanding that they accepted that basis, declaring at the same time that they did not seek "commercial monopoly" or "political supremacy" in the Eastern Seas, and only wished for reciprocal indulgences; which disavowal was embodied in a note annexed to the Treaty when concluded.

Page 18.

That *Borneo* was not included in those discussions.

That on the 17th March, 1824, a Treaty was concluded between Great Britain and the Netherlands "respecting territories and commerce in the East Indies," in which it was agreed that no Treaty thereafter made by either country with any native Power in the Eastern Seas should contain any Article tending either expressly, or by the imposition of unequal duties, to exclude the trade of the other party from the profits of such native Power, and that the officers and agents of the two Governments should form no new settlements "on any of the islands in the Eastern Seas" without the previous authority of their respective Governments in Europe.

Memorandum, Indian Government, November 4, 1862.

Confidential Paper, No. 1737, p. 148.

Ibid., p. 150.

That, notwithstanding these engagements, the aggressive proceedings of the Dutch authorities in Sumatra and elsewhere repeatedly called forth loud complaints from the British merchants, inasmuch as the Dutch invariably showed a disposition to evade the strict fulfilment of the Treaty, and, in some instances, directly to infringe its stipulations (1) by directly imposing on British trade higher duties than the Treaty allowed; and (2) by concluding Treaties with native Powers; or by extending a nominal sovereignty over neighbouring islands, and then, on the plea of sovereignty, introducing the Dutch scale of unequal duties into the ports of those islands; or (3) by closing the ports of those islands and converting an interinsular trade into a coasting trade, to the exclusion of foreign ships. So that the Treaty of 1824, which was concluded with the view of putting an end to the "mutual jealousies and vexatious interference of the authorities and merchants of the two countries in the Indian Seas, and to establish full and fair freedom of commerce in the East between the subjects and possessions of the two Powers, and between the subjects and possessions of each Power and the natives of the islands of the Indian Archipelago," signally failed in its object.

Ibid., p. 150.

Queen's Advocate; October 11, 1840.

To Sir J. Disbrowe, No. , January 29, 1841.

State Papers—
Vol. xxix, p. 881.
Vol. xxiv, p. 573.
Vol. xxxi, p. 899.
Vol. xxviii, p. 1149.
Vol. xxxi, p. 197.

Parliamentary Paper 1846, Foreign Office No. 75.

Parliamentary Paper 1842, Foreign Office No. 99.

Foreign Office Memorandum; August 24, 1864.

And that among the Treaties so concluded were Treaties with Djoukong, Piassa, Landakh, and Mampawa, on the so-called Dutch portion of the Island of Borneo, which contained clauses prohibiting Europeans from settling in those territories without the previous consent of the Dutch Government.

It further appears—

No. 8, May 31, 1841. Confidential Paper, No. 1737, p. 151.

That on the 31st May, 1841, Lord Aberdeen stated that there was nothing in the Treaty of 1824 to prevent the British Government from entering into relations with tribes of Borneo provided the instruments recording those relations contained no Article tending to exclude the trade of the Netherlands.

That in 1842 Sarawak was ceded to a British subject (Rajah Brooke) by the Sultan of Brunei (or Borneo Proper).

That in 1846 the Island of Labuan, with a district on the mainland, was also ceded by the Sultan of Brunei to the British Government.

That this cession was confirmed by a Treaty concluded between Great Britain and the Sultan of Brunei on the 27th May, 1847.

M. Dedel, March 20, 1846.

That in 1846 the Dutch Minister in London (M. Dedel) complained of an expedition undertaken by another British subject (Mr. Murray) in 1844, which led to his death, as well as against the steps taken by the English to suppress piracy in the Eastern Seas.

To M. Dedel, May 4, 1846.

That Lord Aberdeen informed M. Dedel, in reply to these complaints, that "Her Majesty's Government had, after mature deliberation, decided that there was nothing in the Treaty of 1824 to prevent the formation of British Settlements in the districts of the Eastern Archipelago from which Great Britain was not in terms by the Treaty excluded, or in which the Netherlands Government did not possess vested and acknowledged rights."

Page 22.

That M. Dedel admitted that on that part of the coast of Borneo to which the matter then under discussion related (namely, the steps taken by the British naval forces for the suppression of piracy), the Netherland Government possessed no such right, and that they were "districts perfectly independent of any European Power."

Page 23.

That Lord Aberdeen also informed M. Dedel that

Page 23.

the British Government could not allow it for a moment to be supposed that they in any way acknowledged the obligation in no case to take steps for the formation of a Colony there, if thought necessary or expedient.

That on the 6th March, 1856, a Convention was concluded between Great Britain and the Netherlands for the reciprocal admission of Consuls of the one party into the Colonies and Possessions of the other, and that on the 2nd November, 1871, another Convention was concluded "to consolidate more and more, in the spirit of the Treaty of the 17th March, 1824, the friendship between the two countries, and consequently to remove all occasion of misunderstanding in their mutual relations in the Island of Sumatra."

That nothing was said in this Convention about Borneo, but that it was, among other things, stated that Her Britannic Majesty desisted from all objections against the extension of the Netherland dominion in any part of the *Island of Sumatra*, and consequently from the reserve *in that respect* contained in the notes exchanged by the Netherland and British Plenipotentiaries at the conclusion of the Treaty of the 17th March, 1824; the King of the Netherlands engaging, on his part, that the trade of British subjects and British navigation should be placed upon the same footing as the trade of Netherland subjects and Netherland navigation in *that island*.

That it would therefore appear that the British Government have a perfect right to enter into any arrangement which they might think proper with the possessors of territory in Brunei (or Borneo Proper) or in Sulu, provided that no injury is inflicted thereby on the trade of the Netherlands;

That the Dutch have no Treaty right to complain against such arrangement being made; and

See page 18.

That they have themselves, according to their own statement, made encroachments upon the territory of the Sultan of Sulu, thereby disturbing the arrangement made in 1824.

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Decree, February 28, 1846.

**The territories in Borneo in the actual occupation of the *Dutch*, the Sultan of *Brunei*, and the Sultan of *Sulu*, are not clearly defined.**

The territory over which the *Dutch* formerly claimed that right of sovereignty extended in 1846 from Cape Datu on the west, southwards, to the Atas River on the east, that is to say, from point A to point D on the accompanying map (marked A); but the Dutch Minister, in a note dated the 6th September, 1878, stated that his Government now claim the right of sovereignty over the east coast of Borneo as far as Batoe Tinagat, a few degrees to the north of the Sibuco River (situated in latitude 4° 20' or 25'), but in the Netherland Decree of the 28th February, 1846, the Atas River (situated in latitude 3° 20') was distinctly stated to be the boundary, and no doubt it was in accordance with this Decree that a Dutch map was published at Breda in 1857, and dedicated to the Governor of the Royal Naval and Military Academy, in which the limit of the Dutch possessions was marked as running along the *southern* bank of the Atas River, which is 1° south of the Sibuco River. An extract from that map is also annexed (marked B).

Confidential Paper. No. 4053, p. 205.
Mr. Hill's Memorandum, September 28, 1878.

It is true that in a more recent map, published in 1870, the Dutch have marked their boundary-line as running to a point to the north of the Sibuco River, but I have not seen any Decree in which this boundary-line is claimed, although it may exist among the Decrees of the Netherland East Indian Government, but in any case it is evidently an encroachment since 1857. (See extract from map, marked C.)

Mr. Treacher says the *Sulus* still maintain that their territory extends to the Sibuco River. If this be so, it would appear that the right claimed by the Dutch to extend their dominion beyond the Sibuco River is disputed by the Sulus.

Mr. Treacher, No. 3; July 3, 1879.

The territory belonging to the Rajah of *Sarawak* extends from Cape Datu, northwards, as far as Point Kadarong, that is, from point A to point B on the map (A).

The territory belonging to the Sultan of *Brunei* extends from Point Kadarong on the west, northwards, to Sandakan Bay on the north-east (including, it is presumed, the bay itself), that is to say, from point B to point C on the map (A).

The *Sulu* territory formerly extended from the Kimarics River on the north-east (the river mentioned in the Treaty with the East India Company

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of 1733), to the Atas River on the east; but, if the claim of the Sultan of Brunei be admitted on the one side and the claim of the Dutch on the other, it would now only extend from Sandakan Bay to a point (undefined) to the north of the Sibuco River, ~~that is to say, from point C to point B~~ on the map.

Commercial Reports, Part VI, 1876.
Commercial Reports, Part I, 1878.

The *Commercial* importance of the northern portion of the Island of Borneo, to which allusion has already been made, has been amply shown by those who have visited the coast, and from Reports in the possession of this Office.

The *Strategical* importance to Great Britain of her possessing a safe harbour, with a good supply of coal for her ships of war, on or near the northern portion of the island, was fully admitted in 1846. Inquiries were then made as to whether the Island of Balambangan or the Island of Labuan would afford the greatest advantages, and the preference was ultimately given in favour of the latter island, and its acquisition by this country has no doubt placed a valuable strategic position in her hands; but if other nations were to possess harbours for their ships of war in too close proximity to Labuan, its strategic importance to England would be greatly diminished.

Mr. St. John, No. 10; November 4, 1858.

The Spaniards occupied for a short time the Island of Balabac, about 1° north of the Island of Borneo, but were also compelled to evacuate it on account of its unhealthiness, so that it would appear to be very desirable to ascertain how far the northern coast of Borneo is fit for the habitation of Europeans.

The *Political* importance of the northern coast of Borneo to this country consists in the fact that the Netherland Government, on the one hand, have devoted many years of anxious study to the question of gaining ascendency over all the islands in the immediate vicinity of the Islands of Sumatra, Java, and Borneo, as well as over the formerly independent Chiefs in that neighbourhood, with many of whom she has succeeded in concluding Treaties containing clauses which at the time of their conclusion were deemed by the British Government to be prejudicial to British interests; whilst Spain, on the other hand, who possesses vast colonial possessions in the Eastern Seas, has lately shown, a renewed thirst for colonial power by annexing various islands which formerly belonged to the Sultan of Sulu, and if she has not yet occupied the territory on the mainland of Borneo which formerly belonged to the Sultan of Sulu, such forbearance has been mainly due to the attitude taken up by the British Government with reference to that question. But if the Dutch and the Spanish Governments were allowed to acquire fresh territory on the Island of Borneo, and the British Government were to refrain from doing so from the fear of infringing the Treaty of 1824, the whole of the islands in the Eastern Seas, extending for about 2,000 miles in one direction, and 2,500 miles in another, would, with the exception of the small Island of Labuan (and the Straits Settlements on the mainland), be virtually in possession of those two countries, who might in course of time enter into some commercial sort of Zollverein, and thereby exclude British trade entirely from those seas.

Confidential Pa
p. 206.

It is only right, however, that I should add that I am not aware of the footing upon which British subjects are, at the present moment, allowed to trade with the Dutch Possessions in the Eastern Seas; and that of late years the British Government have offered no objection to the Treaties concluded between the Netherland authorities in those seas and the independent Native Chiefs and Rulers.

The accompanying Map (D) shows the positions occupied by the Dutch in the Eastern Seas in 1824, and Map (E) the territory and islands over which she now possesses sovereignty or jurisdiction.

2'

E. HERTSLET.

*Foreign Office,*
*November 4, 1879.*

## Annex 22

## EXTRACT FROM THE ANSWER OF THE COLONIAL MINISTER TO INQUIRIES MADE BY THE COMMITTEE OF THE SECOND CHAMBER IN THEIR PRELIMINARY REPORT ON THE NETHERLANDS INDIAN BUDGET FOR 1880

## (ENGLISH TRANSLATION)

## [illegible]losure 2 in No. 1.

*Extract from the Answer of the Colonial Minister to Inquiries made by the Committee of the Second Chamber in their Preliminary Report on the Netherlands Indian Budget for* 1880.

(Translation.)

THE north-east and north-west portions of Borneo have never been under our dominion. We have never disputed the authority of Spain over the dependencies of Sulu in the north-east portion of the island. We did not interfere with the establishment in Sarawak of an European Rajah vassal of the Sultan of Brunei. When the Treaty of 1847 between England and Brunei was communicated to us by the British Government in 1849, we received it simply as an announcement. We did not oppose the American undertaking in the north of Borneo, which was a forerunner of that of Baron Overbeck. What right and what reasons should we have to assume a hostile attitude towards the latter? If it were a question of a Settlement made in that island by the British Government we might appeal to the general tenour of the London Treaty of 1824 to show that a common occupation by England and Holland of the same island in the Indian Archipelago should be avoided. But as it appears this is simply a question of the establishment of a private Company in virtue of concessions which have been granted by native Chiefs who are independent of our authority. Were our private or commercial interests injured thereby it might be affirmed that the Government should take measures to protect the interests of our country even in districts which are not under the sway of the Netherlands. But there is, as it appears, little reason to apprehend any such danger from the undertaking in question, and it would be difficult to prove that our rights have been infringed by the concessions which have been granted. This holds good at any rate as regards the Brunei concession. As far as the Sulu concession is concerned it is not quite certain whether the contracting parties were well acquainted with the precise frontier-line of the Netherlands territory on the east coast of Borneo. With a view to preventing possible misapprehensions, orders have been issued for the Netherlands flag to be hoisted on the border (on the Batoo Tinagat Rock, situated at the mouth of the Tinagat River in 4° 19" north latitude, and 117° 54" east longitude, according to the last survey) to be placed for the present under the protection of a cruizer, whilst the Sultan of Boloengan has been requested to maintain a Representative at this point on his side of the frontier-line in question.

With regard to what has been and is being done in the north of Borneo beyond the limits of our territory, the Government (who have from the commencement watched those proceedings with the greatest interest) cannot perceive that either our interests or rights have thus far been in any way prejudiced thereby. It is, however, desirable that we should be accurately informed of what takes place there, and for that purpose those localities are at this moment being visited by a ship of war belonging to the Indian Navy, which will shortly be followed by another from the Home Auxiliary Squadron.

## No. 2.

*Mr. Stuart to the Marquis of Salisbury.—(Received November 13.)*

My Lord,

*The Hague, November 12, 1879.*

WITH reference to my despatch of the 24th ultimo, inclosing an extract from the Preliminary Report of the Sections of the Second Chamber of the States-General on the Dutch East Indian Budget for 1880, and a translation of the reply of the Minister of the Colonies respecting the settlement of foreigners, and other questions connected therewith, in the East Indian Archipelago, I have now the honour to inclose the corresponding extract from the Preliminary Report of the Central Committee of the First Chamber which relates to the same questions, together with an extract from the Minister's statement in reply to the observations of the Committee upon the subject.

There seems to be no material difference between Baron de Goltstein's present answer and the explanations which he had previously given to the Second Chamber. He repeats that the Netherlands Government now, as heretofore, are of opinion that the starting point of the Treaty of London of 1824 was the principle that it would be desirable to avoid any mixed possession by Great Britain and the Netherlands of one and the same island in the Indian Archipelago, and he holds that the Netherlands would therefore have the right to object to the establishment of a settlement under British authority in the island of Borneo, if such an intention existed on the part of Great Britain.

His Excellency states, in conclusion, that thus far there is no ground for supposing that the undertaking of Messrs. Dent and Overbeck will assume the character of a British Settlement, and that nothing beyond the exercise of due vigilance can be properly required of the Netherlands Government in the matter.

I have, &c.

(Signed) W. STUART.

## Annex 23

## EXTRACT FROM *THE LONDON GAZETTE*, 8 NOVEMBER 1881, CONTAINING THE TEXT OF THE BNBC ROYAL CHARTER

### EXTRACT FROM

# The London Gazette

### OF

## TUESDAY, NOVEMBER 8, 1881.

*Foreign Office, November 7, 1881.*

THE following Charter has been granted to the North British Borneo Company upon a petition to Her Majesty in Council :—

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To all to whom these presents shall come Greeting.

WHEREAS an Humble Petition has been presented to Us in Our Council by Alfred Dent, of 11, Old Broad-street, in the city of London, Merchant ; the British North Borneo Provisional Association Limited ; Sir Rutherford Alcock, of 14, Great Queen-street, in the city of Westminster, Knight Commander of Our Most Honourable Order of the Bath ; Richard Biddulph Martin, of 68, Lombard-street, in the city of London, Banker, a Member of the Commons House of Parliament ; Richard Charles Mayne, Companion of Our Most Honourable Order of the Bath, a Rear-Admiral in Our Navy ; and William Henry Macleod Read, of 25, Durham-terrace, in the county of Middlesex, Merchant.

And whereas the said Petition states (among other things) to the effect that on the 29th day of December, 1877, the Sultan of Brunei, in the Island of Borneo, made and issued to the Petitioner Alfred Dent and another, or one of them, three several grants of territories, lands, and islands therein mentioned, and a commission.

And whereas the said Petition further states that by the first of the grants aforesaid the Sultan of Brunei granted to the grantees co-jointly their heirs associates successors or assigns all the territory and land belonging to the Sultan on the West Coast of Borneo comprising Gaya Bay from Gaya Head to Loutut Point including Sapangar Bay and Gaya Bay and Sapangar Island and Gaya Island and all the other islands within the limits of the harbour and within three marine leagues of the coast, likewise the province and territory of Pappar adjoining the province of Benoni and belonging to the Sultan as his private property ; and in consideration of that grant the grantees promised to pay severally and co-jointly to the Sultan his heirs or successors the sum of four thousand dollars per annum ; and by that grant the said territories were from the date thereof declared vested in the grantees their heirs associates successors or assigns for so long as they shall choose and desire to hold them ; provided however that the Sultan should have the right to resume the control and government of the said territories if the above-mentioned annual compensation should not have been paid for three successive years.

And whereas the said Petition further states that by the second of the grants aforesaid the Sultan of Brunei granted to the grantees co-jointly their heirs associates successors or assigns all the territories belonging to the Sultan from the Sulaman River on the north-west coast of Borneo unto the River Paitan on the north-east coast of the island containing twenty-one states together with the island of Banguey and all the other islands within three marine leagues of the coast for their own exclusive uses and purposes ; and in consideration of that grant the grantees promised to pay severally and co-jointly to the Sultan his heirs or successors the sum of six thousand dollars per annum ; and by that grant the said territories were from the date thereof declared vested in the grantees their heirs associates successors or assigns for so long as they should choose to hold them ; provided however that the Sultan should have the right to resume the control and government of the said territories if the above-mentioned annual compensation should not have been paid for three successive years.

And whereas the said Petition further states that by the third of the grants aforesaid the Sultan of Brunei granted to the grantees their heirs associates successors or assigns all the following territories belonging to the kingdom of Brunei and comprising the States of Paitan, Sugut, Bangaya, Labuk, Sandakan, Kina Batangan, Mumiang, and all the territories as far as the Sibuco River with all the islands within three leagues of the coast belonging thereto for their own exclusive and absolute uses and purposes ; and in consideration of that grant the grantees promised to pay co-jointly and severally as compensation the sum of two thousand dollars per annum ; and from that date the said territories were thereby declared vested in the grantees their heirs associates successors and assigns for so long as they should choose or desire to hold them ; provided however that the Sultan should have the right to resume the control and government of the said territories if the above-mentioned annual compensation should not have been paid for three successive years.

And whereas the said Petition further states that by the commission aforesaid, after reciting to the effect that the Sultan of Brunei had seen fit to grant to his trusty and well-beloved friends the grantees certain portions of the dominions owned by him comprising the entire northern portion of the Island of Borneo from the Sulaman River on the west coast of Maludu Bay and to the River Paitan and thence the entire eastern coast as far as the Sibuco River comprising the States of Paitan, Sugut, Bangaya Labuk, Sandakan, Kina Batangan, and Mumiang, and other lands as far as Sibuco River furthermore the provinces of Kimanis and Benoni, the province of Paparr, and the territory of Gaya Bay and Sapangar Bay with all the land and islands belonging thereto and likewise the island of Banguey for certain considerations between them agreed, and that one of the grantees therein in that behalf named was the chief and only authorised representative of his Company in Borneo, it was declared that the Sultan had nominated and appointed and thereby did nominate and appoint the same grantee supreme ruler of the above-named territories with the title of Maharajah of Sabah (North Borneo) and Rajah of Gaya and Sandakan with power of life and death over the inhabitants with all the absolute rights of property vested in the Sultan over the soil of the country and the right to dispose of the same as well as the rights over the productions of the country whether mineral vegetable or animal with the rights of making laws coining money creating an army and navy levying customs rates on home and foreign trade and shipping and other dues and taxes on the inhabitants as to him might seem good or expedient together with all other powers and rights usually exercised by and belonging to sovereign rulers and which the Sultan thereby delegated to him of his own free will; and the Sultan called upon all foreign nations with whom he had formed friendly treaties and alliances to acknowledge the said Maharajah as the Sultan himself in the said territories and to respect his authority therein; and in case of the death or retirement from office of the said Maharajah then his duly appointed successor in the office of supreme ruler and governor-in-chief of the Company's territories in Borneo should likewise succeed to the office and title of Maharajah of Sabah and Rajah of Gaya and Sandakan and all the powers above enumerated be vested in him.

And whereas the said Petition further states that on the same day the Pangeran Tumongong (Chief Minister) of Brunei made to the same two persons their heirs associates successors or assigns a grant of the provinces of Kimanis and Benoni on the north-west coast of Borneo with all the islands belonging thereto within three marine leagues of the coast of the said territories belonging to him as his private property to hold for their own exclusive and absolute uses and purposes; and in consideration of that grant the grantees promised to pay as compensation to the Pangeran Tumongong his heirs or successors the sum of three thousand dollars per annum; and the said territories were thereby declared vested in the grantees their heirs associates successors or assigns for so long as they should choose or desire to hold them; and they further promised to protect the Pangeran Tumongong with kindness.

And whereas the said Petition further states that on the 22nd day of January, 1878, the Sultan of Sooloo and the dependencies thereof (in the said Petition and in this Our Charter referred to as the Sultan of Sooloo) made and issued to the same two persons, or one of them, a grant of his rights and powers over territories lands states and islands therein mentioned, and a commission.

And whereas the said Petition further states that by the last-mentioned grant the Sultan of Sooloo on behalf of himself his heirs and successors and with the consent and advice of the Datoos in Council assembled granted and ceded of his own free and sovereign will to the grantees as representatives of a British Company co-jointly their heirs associates successors and assigns for ever and in perpetuity all the rights and powers belonging to the Sultan over all the territories and lands being tributary to him on the mainland of the Island of Borneo commencing from the Pandassan River on the north-west coast and extending along the whole east coast as far as the Sibuco River in the south and comprising amongst others the States of Paitan, Sugut, Bangaya, Labuk, Sandakan, Kina Batangan, Mumiang, and all the other territories and states to the southward thereof bordering on Darvel Bay and as far as the Sibuco River with all the islands within three marine leagues of the coast; and in consideration of that grant the grantees promised to pay as compensation to the Sultan his heirs or successors the sum of five thousand dollars per annum; and the said territories were thereby declared vested in the grantees co-jointly their heirs associates successors or assigns for so long as they should choose or desire to hold them; provided however that the rights and privileges conferred by that grant should never be transferred to any other nation or company of foreign nationality without the sanction of Our Government first being obtained; and in case any dispute should arise between the Sultan his heirs or successors and the grantee therein in that behalf specified or his Company the matter should be submitted to Our Consul General for Borneo; and that grantee on behalf of himself and his Company further promised to assist the Sultan his heirs or successors with his best counsel and advice whenever the Sultan might stand in need of the same.

And whereas the said Petition further states that by the last-mentioned commission, after reciting to the effect that the Sultan of Sooloo had seen fit to grant unto his trusty and well-beloved friends the grantees certain portions of the dominions owned by the Sultan comprising all the lands on the north and east coast of the Island of Borneo from the Pandassan River on the north-west to the Sibuco River on the east coast including amongst others the states of Paitan, Sugut, Bangaya, Labuk, Sandakan, Kina Batangan, and Mumiang, and all the lands and territories in Darvel Bay as far as the Sibuco River together with all the islands belonging thereto for certain considerations between them agreed, and that one of the grantees therein in that behalf named was the chief and only authorised representative of his Company in Borneo, it was declared that the Sultan of Sooloo had nominated and appointed and thereby did nominate and appoint the same grantee supreme and independent ruler of the above-named territories with the title of Datu Bendahara and Rajah of Sandakan with absolute power of life and death over the inhabitants of the country with all the absolute rights of property over the soil of the country vested in the Sultan and the right to dispose of the same as well as the rights over the productions of the country whether mineral vegetable or animal with the rights of making laws coining money creating an army and navy levying customs dues on home and foreign trade and shipping and other dues and taxes on the inhabitants as to him might seem good or expedient together with all other powers and rights usually exercised by and belonging to sovereign rulers and which the Sultan thereby delegated to him of his own free and sovereign will; and the Sultan called upon all foreign nations with whom he had formed friendly treaties or alliances, and he commanded all the Datoos Nobles Governors Chiefs and People owing allegiance to him in the said territories, to receive and acknowledge the said Datu Bendahara as supreme ruler over the said

States and to obey his commands and respect his authority therein as the Sultan's own; and in case of the death or retirement from office of the said Datu Bandahara then his duly appointed successor in the office of supreme ruler and governor-in-chief of the Company's territories in Borneo should likewise if appointed thereto by the Company succeed to the title of Datu Bandahara and Rajah of Sandakan and all the powers above enumerated be vested in him.

And whereas the said Petition further states that all the interests and powers of the grantees under the several grants and commissions aforesaid came to be vested in the Petitioner Alfred Dent.

And whereas the said Petition further states that the Petitioner Alfred Dent and his associates from time to time of necessity expended large sums of money and made great exertions in and about procuring the grants and commissions aforesaid and putting them into use and discharging the obligations arising thereunder.

And whereas the said Petition further states that the Petitioner the British North Borneo Provisional Association Limited, consists of persons who lately agreed to join together for the temporary purposes of acting as intermediaries between the Petitioner Alfred Dent, on the one hand, and a Company to be incorporated (if We should so think fit) by Royal Charter, on the other hand, and of carrying on until the grant of such a Charter the management of the affairs arising under the grants and commissions aforesaid, and who, for convenience of common action and for limitation of liability, have incorporated themselves under the general Statutes relating to companies, that Provisional Association having for its objects as declared by its Memorandum of Association (among others) the following (that is to say):

To purchase from Alfred Dent his interests and powers in over and affecting territories, lands, and property in Borneo, and Islands lying near thereto, including Labuan.

To acquire by purchase or other lawful means other interests and powers in over or affecting the same territories, lands, and property, and interests and powers in over or affecting other territories, lands, and property in the region aforesaid.

To obtain from the Crown a charter incorporating and regulating a Company constituted with the like objects as aforesaid, or other objects relating to any territories, lands, and property as aforesaid.

To transfer to the Company so incorporated any interests and powers as aforesaid for the time being vested in the Association.

And whereas the said Petition further states that all the interests and powers of the Petitioner Alfred Dent under the several grants and commissions aforesaid have been transferred to and are now vested in the petitioner, the British North Borneo Provisional Association Limited.

And whereas the said Petition further states that that Association will, in accordance with its provisional character indicated in its name, and in pursuance of the express provisions of its Articles of Association, be voluntarily wound up in manner provided by Statute, as soon as a sale or disposal of its territories, lands, and property to a Company to be incorporated (if We should so think fit) by Royal Charter has been effected, and will, after payment and discharge of its debts and liabilities, and after distribution among its members of the proceeds of such sale or disposal and of any other its assets, be dissolved.

And whereas the said Petition further states that the Petitioners Sir Rutherford Alcock, Richard Biddulph Martin, Richard Charles Mayne, and William Henry Macleod Read, are, with the Petitioner Alfred Dent, the Directors of that Association.

And whereas the said Petition represents that the success of the enterprise in which the Petitioners are engaged as aforesaid, would be greatly advanced if it should seem fit to Us to incorporate by Our Royal Charter a Company to carry on that enterprise.

And whereas the said Petition further represents that such a Chartered Company would render to Our Dominions services of much value, and would promote the commercial prosperity of many of many of Our subjects.

And whereas the said Petition further represents that the Petitioners are in a position to raise the capital requisite for the proper and effective conduct of the enterprise aforesaid, and they thereby undertake to do so on obtaining the grant of such a Charter.

And whereas by the said Petition the Petitioners therefore most humbly pray that We will be graciously pleased to grant Our Royal Charter for incorporating a Company to carry on the enterprise aforesaid by such name and with such powers and privileges and subject to such conditions as to Us may seem meet.

Now therefore We, having taken the said Petition into Our Royal consideration in Our Council, and being satisfied that the intentions of the Petitioners are praiseworthy and deserve encouragement, and that the enterprise in the Petition described may be productive of much benefit to Our Dominions and to many of Our subjects, by Our Prerogative Royal and of Our especial grace certain knowledge and mere motion have constituted erected and incorporated, and by this Our Charter for Us and Our Heirs and Royal Successors do constitute erect and incorporate, into one body politic and corporate, by the name of THE BRITISH NORTH BORNEO COMPANY, the said Alfred Dent, Sir Rutherford Alcock, Richard Biddulph Martin, Richard Charles Mayne, and William Henry Macleod Read, and such other persons and such bodies as from time to time become and are members of that body, with perpetual succession, and a common seal, with power to alter or renew the same at discretion, and with the further authorities powers and privileges conferred and subject to the conditions imposed by this Our Charter; and We do hereby accordingly will, ordain, and declare as follows (that is to say):

*Transfer to Company of Grants and Commissions.*

1.—The said British North Borneo Company (in this Our Charter referred to as the Company) is hereby authorised and empowered to acquire by purchase or other lawful means from the British North Borneo Provisional Association Limited, the full benefit of the several grants and commissions aforesaid, or any of them, as the same is vested in that Association, and all interests and powers of that Association thereunder, and all interests and powers vested in that Association in over or affecting the territories, lands, and property comprised in those several grants, or in over or affecting any territories lands or property in Borneo or in any island laying near thereto, including Labuan, and to hold use enjoy and exercise the same for the purposes and on the terms of this Our Charter.

*Fulfilment by Company of Promises of Grantees.*

2.—The Company, as representing the original grantees under the several grants aforesaid, shall be bound by and shall fulfil the promises of payment and other promises therein made, subject to any subsequent agreement affecting those promises.

*British character of Company.*

3.—The Company shall always be and remain British in character and domicile, and shall have its principal office in England; and all the members of its Court of Directors or other governing body and its principal representative in Borneo shall always be natural-born British subjects or persons who have been naturalized as British subjects by or under an Act of the Parliament of Our United Kingdom.

*Restriction on Transfer by Company.*

4.—The Company shall not have power to transfer, wholly or in part, the benefit of the grants and commissions aforesaid or any of them except with the consent of one of Our Principal Secretaries of State (in this Our Charter referred to as Our Secretary of State).

*Differences with Sultans.*

5.—In case at any time any difference arises between the Sultan of Brunei or the Sultan of Sooloo and the Company, that difference shall on the part of the Company be submitted to the decision of Our Secretary of State, if he is willing to undertake the decision thereof.

*Foreign Powers.*

6.—If at any time Our Secretary of State thinks fit to dissent from or object to any of the dealings of the Company with any foreign power, and to make to the Company any suggestion founded on that dissent or objection, the Company shall act in accordance therewith.

*Slavery.*

7.—The Company shall to the best of its power discourage, and, as far as may be practicable, abolish by degrees, any system of domestic servitude existing among the tribes of the coast or interior of Borneo; and no foreigner, whether European, Chinese, or other, shall be allowed to own slaves of any kind in the Company's territories.

*Religions of Inhabitants.*

8.—The Company as such, or its officers as such, shall not in any way interfere with the religion of any class or tribe of the people of Borneo, or of any of the inhabitants thereof.

*Administration of Justice to Inhabitants.*

9.—In the administration of justice by the Company to the people of Borneo, or to any of the inhabitants thereof, careful regard shall always be had to the customs and laws of the class or tribe or nation to which the parties respectively belong, especially with respect to the holding possession transfer and disposition of lands and goods, and testate or intestate succession thereto, and marriage divorce and legitimacy, and other rights of property and personal rights.

*Treatment of Inhabitants generally.*

10.—If at any time Our Secretary of State thinks fit to dissent from or object to any part of the proceedings or system of the Company relative to the people of Borneo, or to any of the inhabitants thereof, in respect of slavery or religion or the administration of justice or other matter, and to make to the Company any suggestion founded on that dissent or objection, the Company shall act in accordance therewith.

*Jurisdiction over British Subjects and in Mixed Cases.*

11.—In case at any time We think fit to make provision by Order in Our Council for the exercise and regulation of Our extra-territorial jurisdiction and authority in Borneo, and to appoint any of the Company's officers to discharge judicial or other functions thereunder in Our name, then and so long the Company shall provide all courthouses and establishments necessary or proper in that behalf, and bear all expenses of the exercise of the jurisdiction or authority which those officers are so appointed to exercise.

*Facilities for British National Ships.*

12.—The Company shall freely afford all facilities requisite for Our ships in the harbours of the Company.

*Appointment of Company's principal Representative.*

13.—The appointment by the Company of the Company's principal representative in Borneo shall always be subject to the approval of Our Secretary of State.

*Flag*

11.—The Company may hoist and use on its buildings and elsewhere in Borneo, and on its vessels such distinctive flag indicating the British character of the Company as Our Secretary of State and the Lords Commissioners of the Admiralty from time to time approve.

*General Powers of Company.*

15.—The Company is hereby further authorized and empowered:

(*i.*) To acquire and take by purchase cession or other lawful means, other interests or powers in, over, or affecting the territories, lands, or property comprised in the several grants aforesaid, or any interests, or powers whatever in over or affecting other territories, lands, or property in the region aforesaid; and to hold, use, enjoy, and exercise the same for the purposes and on the terms of this Our Charter.

(*ii.*) To improve, develop, clear, plant, and cultivate any territories and lands comprised in the several grants aforesaid, or otherwise acquired under this Our Charter.

(*iii.*) To make and maintain therein roads, harbours, railways, telegraphs, and other public and other works, and carry on therein mining and other industries.

(*iv.*) To settle any such territories and lands as aforesaid and to aid and promote immigration into the same.

(*v.*) To grant any lands therein for terms or in perpetuity absolutely or by way of mortgage or otherwise.

(*vi.*) To make therein exclusive or other concessions of mining forestal or other rights.

(*vii.*) To farm out for revenue purposes the right to sell in the Company's territories spirits tobacco opium salt or other commodities.

(*viii.*) To make loans or contributions of money or money's worth for promoting any of the objects of the Company.

(*ix.*) To acquire and hold or charter or otherwise deal with steam-vessels and other vessels.

(*x.*) To acquire and hold any personal property (xi.) To deal in merchandise, the growth produce or manufacture of the Company's territories, or other merchandise.

(xii.) To carry on any lawful commerce trade or dealing whatever in connection with any of the objects of the Company.

(xiii.) To establish and maintain agencies in Our Colonies and Possessions and elsewhere.

(xiv.) To act as agent in the region aforesaid for any other Company or body or any person.

(xv.) To sue and be sued by the Company's name of incorporation as well in Our Courts in Our United Kingdom, or in Our Courts in Our Colonies or Possessions, or in Our Courts in foreign countries, as elsewhere.

(xvi.) To take and hold, without licence in mortmain or other authority than this Our Charter, messuages and hereditaments in England and in any of Our Colonies or Possessions and elsewhere, convenient for carrying on the management of the affairs of the Company, and to dispose from time to time of any such messuages and hereditaments when not required for that purpose.

(xvii.) To do all lawful things incidental or conducive to the exercise or enjoyment of the authorities and powers of the Company in this Our Charter expressed or referred to or any of them.

*Questions of Title.*

16.—If at any time Our Secretary of State thinks fit to object to the exercise by the Company of any authority or power within any part of the territories comprised in the several grants aforesaid, or otherwise acquired under this Our Charter, on the ground of there being an adverse claim to that part, the Company shall defer to that objection.

*Prohibition of Monoply.*

17.—Nothing in this Our Charter shall be deemed to authorize the Company to set up or grant any general monoply of trade; and, subject only to customs duties imposed for revenue purposes, and to restrictions on importation similar in character to those applicable in Our United Kingdom, trade with the Company's territories shall be free.

*Deed of Settlement.*

18.—Within one year after the date of this Our Charter there shall be executed by the members of the Company for the time being a Deed of Settlement providing for—

(i.) The amount and division of the capital of the Company and the calls to be made in respect thereof.

(ii.) The registration of members of the Company.

(iii.) The preparation and the circulation among the members of annual accounts.

(iv.) The audit of those accounts by independent auditors.

(v.) The making of Bye-laws.

(vi.) The making and using of official seals of the Company.

(vii.) The winding-up (in case of need) of the Company's affairs.

(viii.) Any other matters usual or proper to be provided for in respect of a Chartered Company.

19.—The Deed of Settlement shall before the execution thereof be submitted to and approved by the Lords of Our Council, and a certificate of their approval thereof signed by the Clerk of Our Council shall be indorsed on this Our Charter and on the Deed of Settlement.

20.—The provisions of the Deed of Settlement may be from time to time varied or added to by a Supplementary Deed made and executed in such manner and subject to such conditions as the Deed of Settlement prescribes.

And We do further will ordain and declare that this Our Charter shall be acknowledged by Our Governors, and Our Naval and Military Officers, and Our Consuls, and Our other Officers, in Our Colonies and Possessions, and on the High Seas, and elsewhere, and they shall severally give full force and effect to this Our Charter, and shall recognize and be in all lawful things aiding to the Company and its officers.

And we do further will ordain and declare that this Our Charter shall be taken construed and adjudged in the most favourable and beneficial sense for and to the best advantage of the Company as well in Our Courts in Our United Kingdom, and in Our Courts in Our Colonies or Possessions, and in our Courts in foreign countries as elsewhere, notwithstanding that there may appear to be in this Our Charter any non-recital, mis-recital, uncertainty or imperfection.

And We do lastly will ordain and declare that in case at any time it is made to appear to us in Our Council that the Company has failed to comply with any material condition by this Our Charter prescribed, it shall be lawful for Us, Our Heirs and Successors, and We do hereby expressly reserve and take to Ourselves Our Heirs and Successors the right and power, by writing under the Great Seal of Our United Kingdom, to revoke this Our Charter, without prejudice to any power to repeal the same by law belonging to Us or them, or to any of Our Courts Ministers or Officers, independently of this present declaration and reservation.

In Witness whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Our *Palace at Westminster*, this first day of *November*, in the *forty-fifth year* of Our Reign.

By Her Majesty's command,

(L.S.) CARDEW.

## Annex 24

## *NOTES ON THE NORTH BORNEO CHARTER* BY SIR J. PAUNCEFOTE DATED JANUARY 1882

## *Notes on the North Borneo Charter.*

THE Sulu and Borneo Papers are so voluminous, extending as they do over a period of five years (1876-81), that it may be convenient to recapitulate briefly the principal facts, and to advert to the particular circumstances under which it was deemed expedient to grant this Charter from a political point of view, and also to offer some remarks on its character and legal effects.

Sir E. Hertslet, in his Memorandum of the 6th November, 1879, on the political, strategical, and commercial advantages to Great Britain of the northern part of Borneo, has shown that the extraordinary thirst for colonial power in the Eastern Archipelago manifested by Spain and Holland has taken such development of late years, that were it not for the attitude of the British and German Governments in regard to Sulu and Borneo, the whole of the islands of the Eastern seas, extending 3,000 miles in one direction and 2,500 miles in the other, would, with the exception of the Straits Settlements, Labuan and Sarawak, be in the absolute power of these two nations, to the grave prejudice of British trade and of British interests in general.

The immense acquisitions of Holland since the Treaty of 1824* are shown in a map annexed to Sir E. Hertslet's Memorandum, and have been effected so quietly and gradually as to have escaped general observation. They are not confined to the islands south of the Straits of Singapore, to which the Treaty of 1824 applies, but comprise the southern part of Borneo, one of the largest islands in the world.

On the other hand, the incessant aggressions of Spain in the Sulu Archipelago had become so intolerable in 1876 as to call for the joint intervention of Great Britain and Germany.

The claim of sovereignty over the Sulu Archipelago asserted by Spain under old Treaties and "Capitulations" has always been contested and opposed by Great Britain and Germany.

A résumé of our controversy with Spain on the subject up to 1874, arising out of rival Treaties with Sulu, will be found in Appendix No. 1 to Part III, p. 342, and it is continued up to 1878 in Appendix No. 4, p. 357.

In March 1874 the facts of the case, as they stood at that period, were laid before the Law Officers, who reported that in their opinion Her Majesty's Government would not be justified on Treaty grounds in further remonstrating against the claim of Spain to sovereignty over Sulu. But, notwithstanding this Report, Her Majesty's Government determined, as a matter of policy, to continue their resistance to that claim in conjunction with the Government of Germany. Long negotiations ensued between Great Britain and Germany on the one side, and Spain on the other, which finally led to a basis of arrangement. Lord Derby accepted this basis as a *modus vivendi* on certain conditions, the first of which was that the Protocol proposed to be drawn up for carrying it out "should contain no recognition of Spanish sovereignty over any part of the Sulu Archipelago." Instructions in that sense were sent by Lord Derby to the British Representative (Sir H. Layard), both by despatch and telegram, on the 26th January, 1877 (Part II, p. 116). The Protocol was finally signed at Madrid by the Representatives of Great Britain and Germany, and by the Spanish Minister at Madrid, on the 11th March, 1877, and its object was declared to be the maintenance of the freedom of commerce and navigation in the "Sulu Archipelago."

All reference to the burning question of sovereignty was purposely avoided in the text of this document, but Sir H. Layard, in accordance with his instructions, informed the Spanish Minister that "it must be distinctly understood that the claim of Spain to sovereignty over the Sulu Archipelago was not acknowledged."

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* Hertslet's Treaties, vol. II, p. 224.

It was understood and agreed that the question of sovereignty should remain *in statu quo*.

The Protocol made concessions on either side, and it was believed that all grounds of future discussion were removed. This illusion, however, was speedily dispelled by the announcement that the Spaniards had compelled the Sultan to sign a fresh Treaty with them, which revived the old dispute as to sovereignty.

By this Treaty,* dated the 22nd July, 1878, the Sultan was made to constitute himself the Vassal of Spain and to recognize Spanish sovereignty over the whole of the Sulu Archipelago *and its dependencies*, which, according to the Spanish contention, include the territories tributary to the Sultan on the north-east coast of Borneo.

It should be borne in mind that the Madrid Protocol, which secured our trade from further molestation in the Sulu Archipelago, does not extend to the mainland of Borneo. It was the more important, therefore, to prevent the occupation of this territory by Spain; and, indeed, as far back as December 1876, when the negotiations for the Madrid Protocol were opened, the Colonial Office had urged the Foreign Office "to warn the Spanish Government at once that whatever might be the end of the negotiations as to Sulu, no claim to any places on the mainland of Borneo, founded on the plea of their being dependencies of Sulu, would in any case be recognized by Her Majesty's Government." (Part II, p. 93.)

The Spaniards proceeded at once to assert their claim of sovereignty over Sulu and its dependencies by virtue of the new Treaty, and attempted to plant their flag on the north-east coast of Borneo (part III, pp. 205, 221, 232, 280). But they were unsuccessful, owing to the resistance of the natives, and to the visits of a British man-of-war sent there to protest. Nevertheless, these attempts were repeated, notwithstanding the assurances of the Spanish Government that they had no intention of occupying Borneo, and had received no official information of the proceedings complained of.

The position of affairs was most embarrassing, and it was at this juncture that Mr. Dent appeared on the scene, and obtained the territories of Northern Borneo under cessions from the Sultans of Brunei and Sulu, both of whom asserted sovereignty or suzerainty over the north-east coast now claimed by Spain. These cessions had been made to Mr. Dent before the date of the new Spanish Treaty of the 22nd July, 1878.

Mr. Dent addressed a printed Statement to Lord Salisbury on the 2nd December, 1878, applying for a Royal Charter of Incorporation to an Association in course of formation for the development of these territories. In the meanwhile reports continued to arrive from our Consul at Manila, and from Labuan and Singapore, which could leave no doubt as to the intention of Spain to occupy the north-east coast of Borneo unless vigorously checked.

On the other hand, the Dutch who occupy the adjoining territories in Borneo, were startled at the news of the cessions by the Sultans to Mr. Dent, and displayed a degree of anger and petulance in their communications on the subject to Her Majesty's Government most unusual in diplomatic correspondence, and which betrayed their disappointment at having neglected to secure these cessions for themselves.* They instantly advanced claims to territory considerably to the north of their proper boundary, as publicly defined and declared in their official maps and documents, and they at once planted, and have ever since employed gun-boats in guarding, their flag north of the Sibuco River, which is the southern limit of Mr. Dent's concessions. (Part IV, p. 63.)

Lord Salisbury dealt very firmly with the claims of Spain and of Holland.

First as regards Spain. In January 1879 the new Treaty between Spain and Sulu was laid before the Law Officers, together with the Madrid Protocol, and the whole correspondence relating to [illegible]lu, and numerous documents, including Mr. [illegible]nt's concessions on the north-east coast of

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* See Part III. Appendix, p. 388.

* In one instance Lord Granville was obliged to call on Count Bylandt to withdraw a communication he had made by direction of his Government, and it was withdrawn accordingly. (Part IV, p. 103, No. 118.)

Borneo, and his statement and application for a Charter of Incorporation, and they were requested to advise whether Her Majesty's Government would be justified in protesting against the new Spanish Treaty. (Part III, No. 270, p. 225.)

In the meanwhile, Count Münster asked Lord Salisbury what was the view of Her Majesty's Government with respect to the new Spanish Treaty, expressing his own view that it would be found inconsistent with the Protocol, and urging an early decision. He was informed in reply that the matter was still before the Law Officers, but that the general view taken of it in the Foreign Office was that the Treaty was opposed to the stipulations of the Protocol. (Part III, Nos. 272 and 273, p. 227.)

On the 3rd February, 1879, the Law Officers reported that, in their opinion, Her Majesty's Government would not be justified in protesting against the new Spanish Treaty as regards its application to the Sulu Archipelago. That as regards the north-east coast of Borneo, if it could properly be described as "a dependency of the Archipelago," it would pass under the sovereignty of Spain by the 1st Article of the Treaty;[*] and that as regards the cession of that territory to Mr. Dent, Lord Salisbury might, perhaps, have some hesitation in putting that gentleman's case forward for the favourable consideration of the Spanish Government, since that act would be an admission of the rights of Spain. (Part III, No. 274, p. 227.)

Notwithstanding this Report, Lord Salisbury decided to adhere to the policy of Lord Derby, and to continue to resist the Spanish claim of sovereignty, in conjunction with the German Government. The concurrence of the Colonial Office in that course was invited on the grounds stated in a letter to the Colonial Office of the 27th February, 1879 (Part III, No. 277, p. 231); and they were informed, with reference to Mr. Dent's application for a Charter, that "Lord Salisbury was inclined to think that the undertaking was one which might properly receive the support of Her Majesty's Government, if the claims of Spain to the territory ceded could be disposed of.

The reply of the Colonial Office, dated the 21st March, 1879 (Part III, No. 284, p. 235), as regards the main points, is contained in the following extract:—

"In reply, I am directed to request that you will state to the Marquis of Salisbury that Sir Michael Hicks Beach concurs in the course proposed by his Lordship with respect to Spain, which, from the Memorandum of the 19th December last, he understands to be to act in concert with Germany in keeping Spain to the engagements entered into in the Protocol of March 1877 with respect to the Sulu Archipelago, and in objecting altogether to her establishment on the Borneo coast.

"It appears to Sir Michael Hicks Beach that if, as in 1874, our policy on this matter is not to be entirely governed by the Law Officers' opinion, and resistance is still made by Great Britain and Germany to the pretensions of Spain, some time will necessarily elapse before the question can be finally settled; and until this is done, Sir Michael Hicks Beach does not think that it will be possible to deal with the proposals of Messrs. Overbeck and Dent. On this subject, however, I am to request that you will inform Lord Salisbury that, for the reasons stated in his letters of the 24th April and 22nd July, 1878, and the 8th February, 1879, Sir Michael is unable to feel satisfied that Messrs. Overbeck and Dent's scheme should be approved; but he does not wish to press these views further, should the Secretary of State for Foreign Affairs be decidedly of another opinion, as he entirely recognizes that the matter is one for the consideration of the Foreign Office rather than of the Colonial Office."

In May 1879 Lord Salisbury addressed the following two despatches to Mr. West, Her Majesty's Minister at Madrid[*]:—

The first relates to the Archipelago, the second to Borneo.

*The Marquis of Salisbury to Mr. West.*

"(No. 88.)

"Sir, "*Foreign Office, May 30, 1879.*

"In the midst of the preoccupations occasioned by the political situation in Europe, Her Majesty's Government have been compelled to postpone from time to time the consideration of the important questions raised by the new Treaty concluded last year between Spain and Sulu, and which form the subject of your despatches noted in the margin.

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[*] The 1st Article begins as follows:—"We declare the sovereignty of Spain to be unquestionable over all the Archipelago of Sulu and its dependencies." The territory on the north-east of Borneo is described as tributary to the Sultan of Sulu in the Spanish Treaty of 1836.

[*] Part III, No. 291, p. 243; and No. 292, p. 244.

"In those despatches you reported the conversations which had taken place at various times between yourself and the Spanish Minister for Foreign Affairs on the subject of this Treaty, and the explanations and assurances given to you by his Excellency; and in your despatch No. 285 of the 21st October, you transmitted a copy of the Treaty which had been officially communicated to you by Señor Silvela, together with a note, in which his Excellency stated that the stipulations therein contained do not in any way alter the Protocol signed by Spain, Germany, and England on the 11th March, 1877.

"The most important stipulations of the Treaty are those which declare that the sovereignty of Spain over the Archipelago of Sulu and its Dependencies is incontrovertible, and that Sulu and its Dependencies will hoist the Spanish flag in its villages and boats.

"Although, as stated by Señor Silvela, these stipulations do not alter the Protocol, Her Majesty's Government are unable to view them in the light in which they are presented by his Excellency. They cannot regard this Treaty as consistent with the spirit of the Protocol, and they consider that it constitutes a departure from the understanding upon which the negotiations which led to that instrument were commenced and carried on to a successful issue.

"I have no desire to enter on a retrospect of the differences which the Protocol was intended to allay. It is only necessary for the present purpose to remind the Spanish Government that in January 1877 Her Majesty's Minister at Madrid, in pursuance of the instructions which he received in that behalf, informed Señor Silvela that it must be distinctly understood that the Spanish claim of sovereignty over the Sulu Archipelago would not be recognized by Her Majesty's Government. Accordingly the negotiations proceeded on that understanding, and care was taken by the Representatives of Great Britain and Germany to expunge from the draft of the Protocol any expressions which might appear inconsistent therewith.

"Her Majesty's Government entertained the hope that this question, which had been the subject of such lengthy and painful discussions between the two Governments, would not have been revived, and they received the announcement of this renewed attempt on the part of Spain to assert the rights of sovereignty over the Dominions of the Sultan with feelings of surprise and regret.

"After a careful consideration of all the circumstances, Her Majesty's Government feel called upon formally to reserve to themselves the faculty of declining to recognize the new Treaty so far as its provisions purport to confer on Spain any rights over the Sulu Archipelago not expressly conceded to her by the Protocol of the 11th March, 1877, and which may conflict with the interests of Great Britain.

"I have therefore to instruct you to address an official communication to that effect to the Spanish Minister for Foreign Affairs.

"I am, &c.
(Signed) "SALISBURY."

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*The Marquis of Salisbury to Mr. West.*

"(No. 89.)

"Sir, "*Foreign Office, May 28, 1879.*

"In my despatch No. 88 of the 20th instant, I have conveyed to you the views of Her Majesty's Government on the subject of the new Treaty concluded last year between Spain and Sulu, so far as it affects the islands of the Sulu Archipelago, which come within the operation of the Protocol between Great Britain, Germany, and Spain of the 11th March, 1877.

"In that despatch you were instructed to inform the Spanish Minister for Foreign Affairs that Her Majesty's Government reserve to themselves the faculty of declining to recognize this Treaty, so far as its provisions purport to confer on Spain any rights over the Sulu Archipelago not expressly conceded to her by the Protocol, and which may conflict with the interests of Great Britain.

"But the complaint of Her Majesty's Government is not limited to the revival under this Treaty of the claim of Spain to sovereignty over the Sulu Archipelago. Their objections to the Treaty acquire additional force and gravity from the circumstance that, as you were informed by my despatch No. 123 of the 8th November of last year, attempts are being made by the Governor and Captain-General of the Philippines to extend its provisions beyond the limits of the Sulu Archipelago, and to hoist the Spanish flag at Sandakan and other places alleged to be tributary to the Sultan on the continent of Borneo.

"On this part of the question I have to make the following observations:—

"In your despatch No. 169 of the 13th September, you reported that at an interview which had taken place that day between yourself and Señor Silvela, his Excellency informed you that the new Treaty 'would only place Spain upon the same footing with regard to sovereignty as she had been upon under previous Treaties.' In your subsequent despatch No. 174 of the 18th September, you reported that at a further interview with Señor Silvela his Excellency had again stated that the Sultan, under this Treaty, 'had, in fact, merely given back to Spain the sovereignty which she had formerly exercised over his territories.'

"Now the territorial limits of the sovereignty claimed by Spain under former Treaties never comprised any part of Borneo, but were confined to Sulu and the adjacent islands. In the Spanish Treaty of 1836, Article I clearly defined the limits of the jurisdiction which Spain asserted in Sulu, and these are declared to extend 'from the western point of Mindanao to Borneo and Palawan, with the exception of Sandakan and the other countries tributary to the Sultan on the continent of Borneo.' In the Supplemental Agreement of 1850, the only territory mentioned is 'the extent of islands situated within the limits of Spanish right.' In the Spanish Treaty of 1851, which refers to the Treaty of 1836, and is entitled 'An Act of Re-Submission,' no mention is made of Borneo, but only of the 'Sulu Archipelago.' This expression was used throughout the Protocol at the instance of Señor Silvela, who maintained that the terms 'Sulu and the adjacent islands' and 'the Sulu Archipelago' had always been used synonymously by the Spanish Government.

"Indeed, this limitation of the claims of Spain appears in the Circular of the 2nd July, 1869, addressed by the Spanish Government to the Representatives abroad, and in the Circular of the 19th July, 1871, addressed by them to their Consuls. It appears, also, more than once in Señor Calderon Collantes' note of the 14th November, 1876, to Her Majesty's Representative at Madrid; also in the note of the 1st December, 1876, from the Marquis of Casa Laiglesia to the Earl of Derby, and in many other Spanish official documents.

"On the 23rd November, 1876, Señor Calderon Collantes assured Her Majesty's Representative that Spain was not disposed to put forward exaggerated claims, that she did not require the whole of the vast archipelago, and that in the Treaties between Spain and Sulu and in other documents 'Sulu and the adjacent islands' were described as ceded to Spain.

"Further, in January 1877, shortly before the signing of the Protocol, Señor Silvela declared to Her Majesty's Representative at Madrid 'that his Ministry had no designs on Borneo, and limited the claims of Spanish sovereignty to 'Sulu and the adjacent islands.' Finally, Her Majesty's Government have received from the Sultan himself the assurance that at no time has he or have his ancestors ceded any part of Borneo to Spain.

"On the other hand, the Spanish Government can hardly be unacquainted with the ancient Treaties concluded between Great Britain and Sulu with respect to these territories, and with the fact that in 1760 they were actually ceded by the Sultan to the East India Company, as recorded in a Deed of Grant in the possession of Her Majesty's Government. If, therefore, the sovereignty or paramountcy over that part of the continent of Borneo is to be assumed by any European Power, the prior claims of Great Britain cannot be contested.*

"In view of all these facts, and of the assurances given by the Spanish Minister for Foreign Affairs, Her Majesty's Government are unwilling to believe that the proceedings of the Governor and Captain-General of the Philippines in Borneo can meet with the approval of the Spanish Government, and they trust that instructions will be sent to Manila without delay, which will put an end to this fresh complication.

"In the meanwhile, Her Majesty's Government feel bound to enter their formal protest against the claim of Spain to sovereignty over any part of Borneo, and I have accordingly to instruct you to read this despatch to the Spanish Minister for Foreign Affairs, and also to leave a copy of it with his Excellency.

"I am, &c.

(Signed) "SALISBURY."

In January 1880 Lord Salisbury, after considering the replies of the Spanish Government, addressed the following despatch to Mr. West:—

*The Marquis of Salisbury to Mr. West.*

"(No. 2)

"Sir, "*Foreign Office, January 8, 1880.*

"Her Majesty's Government have carefully considered the documents which the Duke of Tetuan placed in your hands on the 5th November, and a further Memorandum which the Spanish Minister has communicated to me, and of which I transmit to you a copy.†

"The official communication of these documents imposes upon me the obligation of stating that, after the most careful consideration, Her Majesty's Government are unable to modify the conclusions which were explained in my despatch No. 30 of the 20th May.

"Especially in regard to the alleged sovereignty of Spain over any portion of the Island of Borneo, it is my duty to renew the protest contained in the last paragraph of my above-cited despatch.

"Her Majesty's Government do not wish it to be understood that, in entering this protest, they have in view the establishment of any British dominion or rights of sovereignty over any portion of that island. It is not with that purpose that they have quoted the grant of the territories in question made by the Sultan of Sulu to the East India Company in 1769. But, as an evident consequence of that conveyance, as well as of other more recent engagements, Her Majesty's Government feel bound to declare that if the independence of the Sultan of Sulu in Borneo is to terminate in favour of any European Power—an issue which they earnestly deprecate—Great Britain is the only Power which possesses a legitimate claim to take his place.

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* For copies of Grants to the East India Company, see Part III, Appendix, p. 384.

† No 226 in Part III, p. 303.

"If it should appear upon examination that the north-eastern portion of Borneo really belongs in right to the Sultan of Brunei, the engagements into which His Majesty has entered would preclude him from alienating any part of his dominions without the consent of the British Government.

"I am, &c.

(Signed) "SALISBURY."

In April 1879, a British man-of-war, as before stated, was despatched to Borneo to protest against the hoisting of the Spanish flag on that coast (Part III, p. 253). *In* July Lord Salisbury instructed Mr. West to ask the Spanish Government for explanations respecting the conduct of Señor Martinez, styling himself Spanish Governor of Sulu, who had addressed a letter to Mr. Dent's representative in Borneo, claiming the territory on behalf of Spain under the new Treaty (Part III, p. 267).

The reply was that they knew nothing of the matter (p. 275), but subsequently, in October 1879 (Part III, p. 290), they attempted to justify the proceeding under the new Treaty. In the meanwhile instructions were sent out that a ship-of-war should visit Sandakan and other ports on the coast of Borneo as often as possible, to watch the proceedings of the Spaniards, and to report to Her Majesty's Government (Part III, p. 294).

Lord Salisbury's despatches to Mr. West (Nos. 58 and 59) were concurred in by the Colonial Office, and the views therein expressed were assented to by the German Government, to whom copies were furnished, and who sent instructions as regards Sulu to their Representative at Madrid in the same sense.

The attitude of Her Majesty's Government as regards Holland and her claim to interfere in the matter was equally firm and decided. I would refer to Lord Salisbury's despatch to Mr. Stuart No. 52 of the 24th November, 1879 :—

"(No. 52.)

"Sir, "*Foreign Office, November 24, 1879.*

"I have to inform you that Count de Bylandt came to speak to me with respect to the proposals laid before Her Majesty's Government by Messrs. Dent and Overbeck, and read to me a despatch which he left with me, of which a copy is inclosed. I replied to him that it was difficult for me to give a definite answer until I knew precisely the character in which the Netherlands Government were addressing Her Majesty's Government. If they were founding themselves upon any assumed rights over the northern part of Borneo, based on the Treaty of 1824, I could only reply that we had never recognized the applicability of that Treaty to the Island of Borneo; and that I was unable to depart in any particular from the language used upon that point by Lord Aberdeen, when a similar question was raised in the year 1845. Her Majesty's Government recognized no rights over the North-East of Borneo, except those of the Sultans of Sulu and Brunei, and at present the object of Her Majesty's Government was not to do anything in derogation of their rights. But it was possible that the Netherlands Government were addressing Her Majesty's Government rather from the point of view of a power whose territory was adjacent to the regions with which Messrs. Dent and Overbeck had concerned themselves, and who naturally, therefore, felt a lively interest in the disposal which might be made of that country. Replying to them in that sense, I said I should have no objection to communicate to them the course Her Majesty's Government proposed to pursue in reference to the proposals of Messrs. Dent and Overbeck, as soon as we had come ourselves to some conclusion in respect to them. I could not promise, as he appeared to wish, that we would communicate the concession which Messrs. Dent and Overbeck had received from the Sultan of Sulu, because that was a document belonging to them, and not to us. But I had no wish to observe the slightest reserve in respect to any powers conferred upon them by Her Majesty's Government, or in respect to the policy which we intended to pursue towards them. Count de Bylandt used several times the words "British dominion" and "British protectorate," and I thought it therefore desirable to state to him that, without prejudicing any question of right, as a matter of fact Her Majesty's Government had no present intention of assuming any attitude with respect to that territory at all corresponding to such phrases. Probably, even if our response to Messrs. Dent and Overbeck was favourable, Her Majesty's Government would not go further than was justified by the precedent of Sir James Brooke at Sarawak, or of those chartered commercial companies which in former times it had been the policy of this country to establish in various parts of the world without any aim of territorial acquisition.

"The object of Her Majesty's Government was not to set up any dominion, or to enter upon controversy with respect to territorial claims, but simply, if we saw an opportunity, to promote the development of the resources of the country under discussion. I pointed out to Count de Bylandt that I could not hold out to him any hope that Her Majesty's Government would change their views with respect to the question of territorial right; but I thought it possible that both Governments might without disadvantage defer any discussion upon this point without prejudice to their claims, whatever these might be, and consider rather the economical and commercial interests which might be advanced by opening up this fertile country.

"I am, &c.

(Signed) "SALISBURY."

The correspondence between the various Governments was still going on when the late Administration resigned office.

Mr. Dent, on the 12th April, 1880, had addressed a letter to Lord Salisbury (Part IV, p. 16), pointing out the progress made towards the civilization and development of the country in question since the occupation of it by his Resident and agents in December 1877. He stated that order prevailed, that Englishmen were cordially welcomed, that the authority of his Resident and agents was everywhere acknowledged by the native Chiefs and populations, and he urged an immediate decision on his application for a Charter. These assurances were confirmed by official reports from our Consular and Naval officers. (See pp. 36 to 45, *post*.)

The question presented great difficulties, for unless the territory were occupied by Great Britain, it seemed impossible to exclude Spain or Holland from it. The only alternative which presented itself was to support Mr. Dent in his occupation of it, and to favour his scheme for the administration of the country by a British Company, under the suzerainty of the Sultans, whereby its occupation by any foreign Power would be rendered very difficult.

Before this question could be referred to the late Cabinet, the general election took place; and on the 22nd April Mr. Dent was informed, in reply to his letter of the 12th, that Lord Salisbury was of opinion that the question should be left to be dealt with by his successor. (Part IV, p. 23.)

On the 3rd July, 1880, the following Memorandum (Part IV, p. 85) was submitted to Lord Granville:—

"This is one of the important questions which was left unsettled by the late Government, and which urgently calls for solution, as Mr. Alfred Dent, who holds the Concession of these territories, has been kept in suspense two years, and cannot work out his scheme until he obtains the Charter for which he asks.

"Mr. Dent has called on me with reference to Lord Salisbury's letter of the 22nd April, in answer to his application of the 12th April. (See 'Further Correspondence,' p. 23.) He says that he has already spent about 40,000*l.* in expenses, and if Her Majesty's Government will not support him he will have no alternative but to dispose of his Concession, though extremely averse from doing so. The position of affairs is as follows:—

"The German press have lately spread rumours of a German Company, under *Government* auspices, taking over the Concession, and the Spaniards would be glad enough to buy out Mr. Dent. The Dutch also are covetous of this territory, which adjoins their own possessions in Borneo, and the Russians are said to be on the look-out for a port in the China Seas. There is no danger of Mr. Dent parting with his Concession in favour of foreigners or a foreign Government if he can carry out his original scheme, but the time has arrived when a decision must be arrived at, for, although a wealthy man, he cannot go on bearing the present expenditure.

"The Foreign Office and the Colonial Office concur in the opinion that, although it is not desirable that a British Protectorate should be established over this territory, it is of great importance to British interests that no foreign Power should obtain possession of it, or, indeed, exercise any influence there. This applies notably to Spain, whose claim to the north-east coast of Borneo has been firmly resisted by the late Government, on grounds which will, no doubt, commend themselves to the present Administration.

"[See 'Correspondence, Part III,' Foreign Office despatch No. 58 as to Sulu, p. 244; and No. 59 as to Borneo. Also 'Further Correspondence,' Foreign Office despatch No. 3, p. 1 (8th January, 1880). Also Admiral Coote's Report to the Admiralty of his recent visit to the place, separate print of July 1880, p. 1.]

"The only practical mode (short of British annexation or Protectorate) of excluding the influence of foreign Governments from this part of the Continent of Borneo, and indeed of keeping it out of their hands, is to secure its *occupation* by British subjects under such a Concession as is held by Mr. Dent.

"Owing to the great delay which has taken place in this matter, and to the rumours of difficulties with Her Majesty's Government which this delay has given rise to, Mr. Dent does not think that the scheme could be carried out by an ordinary Joint Stock Company. But he proposes to form a syndicate of his personal friends (all men of wealth and position) who are prepared to invest the necessary capital for that purpose if they can obtain a grant of a Charter such as is suggested in Mr. Dent's 'Statement' of the 2nd December, 1878, p. 12.*

"In my opinion, this is the proper mode of dealing with the case, not only in the interests of the Association, but in the interests of Her Majesty's Government, and for the following reasons:—

"If an ordinary public Company be formed, Her Majesty's Government will possess no control over it. But if a Charter be granted, conditions can be inserted which will secure Her Majesty's Government against any political difficulties.

"It is clear that so long as the territory is not annexed by Great Britain (and such intention has been officially repudiated, Foreign Office despatch No. 2, 8th January, 1880, 'Further Correspondence,' p. 1), no difficulty need be apprehended from any foreign Power, except so far as any Treaty rights which they may claim in the territory should be infringed by the new proprietors. To obviate the latter contingency, a clause might be inserted in the Charter similar to that which will be found in the annexed copy of the Charter granted to 'The Eastern Archipelago Company' in 1847 at p. [illegible], whereby the Corporation are bound to obey the directions of the Secretary of State as regards their relations with foreign States. Other clauses might be inserted such as are proposed in Mr. Dent's 'Statement' at p. 12.

"The question of jurisdiction could be dealt with in the same way, and, if necessary, could be disposed of under the Foreign Jurisdiction Acts; but I see no reason why the Corporation should not exercise civil and criminal jurisdiction in the name of the Sultans of Sulu and Brunei, under whose suzerainty they hold the territory, as in the case of Rajah Brooke at Sarawak.

"It is most important to all concerned that this matter should be dealt with promptly, and if Lord Granville concurs in the above views, I would suggest that this be at once submitted to the Colonial Office, and (subject to their observations thereon) to the Law Officers of the Crown.

(Signed) "JULIAN PAUNCEFOTE.

"*July* 2, 1880."

The Charter suggested in the above Memorandum differed in character from the Charters formerly granted to the East India Company, the New Zealand Company, and the Hudson's Bay Company, in the following respect.

"There the British Crown had already dominion over the territory to be occupied by the Companies, and was able to grant extensive powers of government and commercial privileges to them."

In the case of Borneo, the Crown has no dominion over the territory, and would grant absolutely nothing but incorporation. The grant of the Charter, nevertheless, would be the formal recognition of the title of Mr. Dent and his Association to the territories ceded to him by the Sultans. This recognition was the main object of the Charter, and in return for such recognition the Company offered to submit to the control of Her Majesty's Government in the exercise of the powers derived from the Sultans, especially respecting the treatment of the natives, and in the settlement of any questions arising between them and foreign Powers.

It was open to Mr. Dent to have obtained incorporation for his Company by simply registering it under the Companies Acts, and he required no authority from Her Majesty's Government to carry out his scheme.†

But what was indispensable to its success was the approval of Her Majesty's Government, and their support in maintaining his title to the territory.

It will be seen, therefore, that the object and effect of the proposed Charter was to restrict and curtail the powers of the Company, and not to create or enlarge them.

The claims of Spain to the north-east coast of Borneo having been formally repudiated by Great Britain, it was decided to refer the application of Mr. Dent to the present Law Officers of the Crown for their opinion as to whether there was any objection in point of law to the grant of the proposed Charter. This reference, dated the 30th July, 1880, states the case fully, and is embodied in the Report of the Law Officers thereon, dated the 17th September. (Part IV, p. [illegible]; Annex 1 to this Memorandum.)

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* These gentlemen would all be British subjects, as Baron Overbeck would retire by arrangement.—J. P.

* In the cases of the old Charters of Incorporation granted to the African Company (1662), the Levant Company (1592), and the Russia Company (1554), the Crown had no dominion of the territory, and yet granted extensive powers of legislation and jurisdiction, and authorised the Companies to adopt military measures for their security and defence. (See Foreign Office Paper, Confidential No. [illegible].)

† See Law Officers' Report of the [illegible] July, 1871, Annex No. 8.

The Law Officers reported that there was no objection in point of law to the grant of a Charter on the terms generally indicated in the reference, and subject to such clauses as Her Majesty's Government might be advised to have inserted therein.

On the 22nd November, 1880, the Report of the Law Officers was communicated to the Colonial Office (Part IV, p. 71), and they were asked whether they had any objection to offer to the grant of the Charter on the terms proposed.

They replied on the 3rd December (Part IV, p. 72) that Lord Kimberley concurred in the course which Lord Granville proposed to take, namely, to inform Mr. Dent that his application for a Charter would be granted on the terms approved by the *Law* Officers.

In the interval between the letter of the Foreign Office to the Colonial Office of the 22nd November, inviting their concurrence, and their reply of the 3rd December, the papers had been circulated in the Cabinet, and a decision had been arrived at that the Charter should be granted.

Mr. Dent, having been informed of this decision, lodged a petition and draft of a Charter at the Council Office.

The draft Charter was communicated by the Council Office to the following Departments:—the Foreign Office, the Colonial Office, the War Office, and the Admiralty.

I would invite attention to the following letters which passed between the Foreign Office and the Colonial Office on the subject:—

*Mr. Herbert to Sir J. Pauncefote.—(Received June 2.)*

"Sir, "*Downing Street, June 2, 1881.*

"With reference to your letter of the 22nd November last, relating to the grant of a Charter of Incorporation to a British Association for the development of the northern part of the Island of Borneo, I am directed by the Earl of Kimberley to request that you will inform Earl Granville that the Council Office has now forwarded to Lord Kimberley a copy of the draft of the proposed Charter, requesting his Lordship's observations upon it.

"Lord Kimberley proposes to reply to the effect that it will be more convenient that the correspondence on this subject should be conducted by the Foreign Office; but his Lordship, having perused the draft, would be glad to know that Lord Granville has satisfied himself that the terms of the proposed Charter will not have the effect of vesting in Her Majesty the sovereignty over the territory in question, in virtue of the rights thereby recognized by her as acquired by a Company of British subjects from the Sultans of Brunei and Sulu; but that the Sultans will remain Sovereigns although they have delegated the exercise of authority within those territories to the Company.

"It does not appear that this question has been directly submitted to the Law Officers, although they had before them the terms of the concessions to Mr. Alfred Dent, and were reminded that the Sultan of Brunei had purported to grant similar sovereign powers to Sir James Brooke, a British subject.

"His Lordship is also not quite clear as to the operation of those clauses of the draft Charter which empowered the Company to sue and be sued in the Courts of the Colonies which have power of legislation, and which authorize it to hold lands in such Colonies, and would be obliged by an explanation of their necessity and effect.

"I am, &c.

(Signed) "ROBERT G. W. HERBERT."

*Sir J. Pauncefote to Mr. Herbert.*

"Sir, "*Foreign Office, June 13, 1881.*

"I am directed by Earl Granville to acknowledge the receipt of your letter of the 2nd instant, relative to the draft of the Charter applied for by Mr. Dent, of which a copy has been transmitted by the Lord President of the Council to the Colonial Office for the Earl of Kimberley's observations.

"I am to state that a copy has likewise been transmitted to this Department, and that Lord Granville has directed the same to be referred to the Law Officers of the Crown for their opinion and advice, together with your letter under reply, with a view to their reporting on the particular points raised therein.

"I am to observe, however, as regards the question of sovereignty, that in the case submitted for their opinion on the 30th July, 1880, on which their Report of the 17th September last (referred to in your letter) is founded, it was explained that the grant of the Charter applied for appeared to be desirable, assuming that no exception could be taken in point of law to the Government of the territories in question being vested in a private association 'under the suzerainty of the Sultans of Sulu and Brunei;' and the attention of the Law Officers of the Crown will be called to Lord Kimberley's inquiry as to whether the draft of the Charter sufficiently indicates that the rights of the Company will be exercised under such suzerainty.

"As regards the clauses which empower the Company to sue and be sued, and to hold lands in Colonies, Lord Granville apprehends that they are usual provisions in Charters of Incorporation, and are only declaratory of the rights of the Company to the same privileges, in those respects, as private individuals enjoy, subject to the local laws.

"I am, &c.

(Signed) "JULIAN PAUNCEFOTE"

The draft Charter was then referred to the Law Officers in the following terms:—

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

"Gentlemen, "*Foreign Office, June 12, 1881.*

"With reference to your Report of the 17th September last, on the application of Mr. Alfred Dent, of the firm of Dent Brothers and Co., of London, for the grant of a Royal Charter of Incorporation to an association in course of formation for the development of the northern part of the Island of Borneo, under certain concessions of territory and grants of sovereign rights thereover from the Sultans of Sulu and Brunei, I am directed by Earl Granville to state that, in a letter from this Department dated the 16th December last, Mr. Dent was informed that, after a careful examination of the printed Statement presented by him to the Foreign Office in December 1878, Her Majesty's Government were disposed, under the special circumstances of the case, to recommend to the favourable consideration of the Queen his application for a Royal Charter, on the conditions set out in his Statement, and subject to such other conditions as Her Majesty's Government might be advised to have inserted therein when the draft should be submitted for their approval.

"In a letter of the same date from this Department to the Privy Council Office, the Lord President was informed of the decision arrived at, and his Lordship was requested to give the necessary directions on the petition for a Charter when presented by Mr. Dent, and to cause the draft of the Charter to be submitted to this Department, with a view to the insertion therein of such clauses as Lord Granville, after consultation with the Law Officers of the Crown, might deem expedient.

"I have now the honour to lay before you, by Lord Granville's direction, a letter from the Privy Council Office, transmitting a copy of the draft of a Charter which has been applied for by Mr. Dent, and I am to request that you will take the same into consideration, and favour Lord Granville with your opinion as to whether it may be approved by his Lordship in its present form, or whether it requires any modification or addition.

"I am at the same time to transmit to you a letter from the Colonial Office,* containing observations on the draft, together with the reply which has been addressed thereto by this Department;* and I am further to request that you will favour Lord Granville with your opinion on the questions raised by the Secretary of State for the Colonies.

"I am, &c.

(Signed) "JULIAN PAUNCEFOTE"

The Report of the Law Officers (Annex 3), after embodying the terms of the above reference, was as follows:—

"We have the honour to report—

"That in our opinion the granting of the Charter will not have the effect of vesting in Her Majesty the sovereignty over the territory in question, and the Sultans of Brunei and Sulu will be Sovereigns, notwithstanding the delegation of their authority to a private Association incorporated under Her Majesty's Charter.

"The clauses empowering the Company to sue and be sued in the Courts of the Colonies and to hold land in the Colonies are, as is pointed out in the letter of the 13th January, 1881, to the Colonial Office, usual provisions in Charters similar to that now under consideration, and great inconvenience, if not injustice, would probably be occasioned if such clauses were omitted.

"With reference to the terms of the proposed Charter, and apart from the questions raised by the Secretary of State for the Colonies, and above referred to, the Charter may, in our opinion, be approved in its present form, except that we would suggest the insertion at the end of clause 5 of the words 'if he is willing to undertake the same.'"

The above Report of the Law Officers was communicated to the Colonial Office.

The next step in the case was the appointment of a Committee of the Privy Council to deliberate upon Mr. Dent's application for a Charter, and the following correspondence took place between the Foreign Office and the Council Office:—

*Mr. Peel to Sir J. Pauncefote.*

"Sir, "*Privy Council Office, July 13, 1881.*

"Adverting to my letter of the 24th May last, I am directed by the Lord President of the Council to transmit to you, to be laid before Earl Granville, the inclosed copy of a letter containing the observations of the Lords Commissioners of the Admiralty on the draft Charter of Incorporation to the British North Borneo Company, submitted by Mr. Alfred Dent and others for the consideration of Her Majesty in Council.

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* See ante.

"I am to request that you will, when laying this letter before Earl Granville, inform his Lordship that communications have, by the Lord President's instructions, been addressed to the Secretaries of State for the Colonies and for War, for any remarks that they may desire to make in regard to the draft Charter; and that copies of the replies shall be forwarded to you as soon as they have been received at this Office.

"I am, &c.
(Signed) "C. L. PEEL."

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### Inclosure.

*Mr. Swainson to Mr. Peel.*

"Sir, "*Admiralty, July 8, 1881.*

"I have laid before my Lords Commissioners of the Admiralty your letter of the 24th May last, forwarding the draft of a Charter of Incorporation which has been applied for by the British North Borneo Company.

"2. Their Lordships desire me to inform you, in reply, that they have considered the draft Charter, &c., with reference exclusively to the duties which may devolve upon Her Majesty's ships in these seas if it is granted, and without regard to the political considerations which have doubtless been duly weighed by the Secretaries of State for War and the Colonies.

"3. From a naval point of view, it appeared to their Lordships most desirable that the boundaries of the territory proposed to be included under the Charter should be clearly defined; they therefore requested their Lordship's Hydrographer to mark out the boundaries according to the data supplied by the draft Charter. The result will be seen by the chart which is forwarded herewith,* and it appears that the south-eastern boundary is not clearly fixed with regard to the claims of the Dutch on that part of the coast, and, moreover, that the boundary on the western side, near Labuan, is left in a still more uncertain condition.

"4. Their Lordships trust, therefore, that before the Charter is finally granted, steps may be taken either to introduce more definite boundaries into the document itself, or to make provision for the boundaries being satisfactorily fixed hereafter by some competent authority.

"5. I am to observe that the concession appears not to include the Island of Balambangan, which commands, with Banguey Island, the passage into the Sulu Sea from the China Sea, an omission which, if intentional, would appear to merit reconsideration.

"I am, &c.
(Signed) "E. N. SWAINSON.

"*P.S.*—Balambangan was ceded to the *East India* Company by the Sultan or King of Sulu, and a Settlement established there in 1773, though some time afterwards abandoned.

"E. N. S."

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*Mr. Peel to Sir J. Pauncefote.*

"Sir, "*Privy Council Office, July 21, 1881.*

"Adverting to my letter of the 18th instant, transmitting a copy of a letter from the Lords Commissioners of the Admiralty relating to the draft Charter of Incorporation of the British North Borneo Company, submitted by Mr. Alfred Dent and others, I am directed by the Lord President of the Council to transmit to you, for the consideration of Earl Granville, the inclosed copies of two letters, upon the same subject, from the Secretaries of State for the Colonies and War, dated respectively the 19th and 20th of this instant July.

"I am to request that, in laying these communications before Lord Granville, you will be so good as to submit, for his consideration, whether it is desirable that the draft Charter should be amended in accordance with the recommendations of Her Majesty's Secretaries of State by whom this matter has been considered, before a Committee of Council is summoned to deliberate upon the application.

"I am, &c.
(Signed) "C. L. PEEL."

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### Inclosure 1.

*Mr. Bramston to Mr. Peel.*

"Sir, "*Downing Street, July 19, 1881.*

"I am directed by the Earl of Kimberley to acknowledge the receipt of your letter of the 18th instant, requesting that the Lords of the Council may be furnished with his Lordship's observations upon the draft Charter of the British North Borneo Company, which was inclosed in your letter of the 24th May.

"Upon the receipt of the draft Charter Lord Kimberley intimated to Lord Granville his views upon certain points in it, and his Lordship presumes that a communication will be made from the Foreign Office to the Lords of the

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* Not sent to Foreign Office.

Council as to the amendments which it may be desirable to make in the draft.

"I am, &c.

(Signed) "JOHN BRAMSTON."

### Inclosure 2.

*Mr. Thompson to Mr. Peel.*

"Sir, "*War Office, July 20, 1881.*

"I am directed by Mr. Secretary Childers to acknowledge the receipt of your letters of the 11th and 16th instant with regard to the grant of a Charter of Incorporation to the British North Borneo Company. In reply, I am to request that you will move the Lord President of the Council to cause Mr. Childers to be informed whether the military defence of the territory therein referred to, which apparently will vest in the Company in full sovereignty, will be expected of Her Majesty's Government.

"I have, &c.

(Signed) "RALPH THOMPSON."

*Sir J. Pauncefote to Mr. Peel.*

"Sir, "*Foreign Office, July 22, 1881.*

"I have laid before Earl Granville your letter of the 18th instant, inclosing a copy of a letter from the Admiralty, containing some observations on the draft Charter proposed to be issued to Mr. Alfred Dent and others on behalf of the British North Borneo Company.

"I am now to request that you will state to the Lord President of the Council that all questions of boundaries in regard to the ceded territory will be settled as soon as possible, and that clause 16 was inserted in the draft Charter to meet any difficulty which might arise with the Dutch or any other Government on the subject.

"Lord Granville is of opinion that no change is required in the instructions sent to Admiral Willes, in pursuance of the letter from this Department to the Admiralty of the 11th January last, in regard to the protection to be afforded to Mr. Dent and his agents.

"As regards the Island of Balambangan, to which reference is made by the Board of Admiralty, I am to state that it is not included in the concessions made by the Sultans of Brunei and Sulu, but that their Lordships' observations as to the importance of its position will be borne in mind.

"I am, &c.

(Signed) "JULIAN PAUNCEFOTE."

*Sir J. Pauncefote to Mr. Peel.*

"Sir, "*Foreign Office, July 29, 1881.*

"With reference to my other letter of this date, I am directed by Earl Granville to acknowledge the receipt of your further letter of the 21st instant, inclosing copies of communications received by the President of the Council from the Secretaries of State for the Colonies and War, on the subject of the draft Charter to the British North Borneo Company.

"Lord Granville thinks it desirable, in reference to these communications and to the questions submitted in the concluding portion of your letter, to place the President of the Council in possession of copies of the correspondence which has lately passed between this Office and the Colonial Office on the subject, and of the Report of the Law Officers thereupon, and on the draft Charter which was submitted to them at the same time.

"From these papers the Lords of the Council will perceive that the territory to be included in the cession will remain under the suzerainty of the Sultans; and with reference to the question put by Mr. Childers, I am to state that it is not intended that Her Majesty's Government should undertake the military defence of the territory ceded to the Company, but that the latter will receive such protection to life and property as is usually afforded to British subjects in uncivilized places out of Her Majesty's dominions, and which the Company may be reasonably entitled to expect, in the prosecution of an undertaking approved by Her Majesty's Government.

"Lord Granville has no alteration or addition to suggest in the draft Charter beyond that recommended in Article 5 by the Law Officers, but before the Charter is issued, his Lordship desires to furnish a copy to the Netherlands Government, in accordance with their request and with a promise made to them in that behalf.

"I am, &c.

(Signed) "JULIAN PAUNCEFOTE."

In accordance with the request of the Netherlands Government, Count Bylandt was furnished with a copy of the proposed Charter, for any observations they might desire to offer thereupon, and on the 5th August last Lord Granville addressed the following letter to Count Bylandt:—

"M. le Ministre, "*Foreign Office, August 5, 1881.*

"With reference to my letter of the 29th ultimo, in which I did myself the honour to communicate to you a copy of the draft Charter to Mr. Dent and others in the matter of the North Borneo Concession, I have now the honour to inform you that it is proposed to recommend a

meeting of the Privy Council for Saturday next, the 13th instant, to consider this Charter, by which time it is very desirable that Her Majesty's Government should be in possession of any observations which the Government of the Netherlands may desire to make on the draft.

"I have, &c.

(Signed) "GRANVILLE."

On the 13th August, the day originally fixed for the meeting of the Committee of the Privy Council, the following despatch was communicated by Count Bylandt to Lord Granville:—

*Baron Lynden de Sandenburg to Count de Bylandt.*

"M. le Comte, "*La Haye, le 11 Août*, 1881.

"J'ai eu l'honneur de recevoir vos dépêches des 31 Juillet et 8 Août derniers, dont la première accompagnait un exemplaire du projet de charte que le Gouvernement de Sa Majesté Britannique se propose d'octroyer à la Société dite 'British North Borneo Company,' et qui me faisaient part en même temps du désir de ce Gouvernement d'être informé avant la séance du Conseil Privé qui se tiendra Samedi le 13 courant, de l'opinion du Gouvernement Néerlandais à cet égard.

"Le Gouvernement du Roi, M. le Comte, ne saurait être que reconnaissant pour l'occasion qui lui a été offerte de prendre connaissance de la susdite charte avant sa promulgation. Aussi s'empresse-t-il d'user cette occasion, en vous faisant part des considérations suivantes, qui lui sont suggérées par le document dont il s'agit.

"Lors de l'échange de vues auquel l'entreprise du Sieur Dent a donné lieu précédemment, le Gouvernement du Roi a constamment soutenu la thèse qu'il serait utile d'éviter autant que possible que cette entreprise revêtît un caractère politique, et le Gouvernement de Sa Majesté Britannique a déclaré, de son côté, qu'il partageait entièrement cette manière de voir.

"Au mois de Juillet 1880, Lord Granville vous donnait l'assurance positive que l'entreprise conserverait toujours un caractère privé, sans aucune intention ou arrière pensée politique, et qu'il serait question ni d'établir la souveraineté Britannique sur l'Ile de Bornéo, ni d'y arborer le pavillon Britannique. Ainsi qu'il résultait de votre dépêche du 27 Janvier, 1881, Lord Granville vous avait, la veille encore, réitéré cette assurance.

"Or, M. le Comte, le projet de charte renferme en premier lieu un résumé de la teneur des concessions obtenues par le Sieur Dent, et il en ressort avec la dernière évidence que des droits de souveraineté lui ont été cédés par les Sultans de Brunei et de Sulu.

"De même l'Article 4 interdit à la Société de transférer ses concessions à des tiers, si le Gouvernement de Sa Majesté Britannique n'a pas au préalable accordé son consentement à ce transfert. L'Article 8 impose à la Société l'obligation de soumettre à la décision du Gouvernement de Sa Majesté Britannique les litiges qui pourraient s'élever entre elle et les Sultans susmentionnés. Les Articles 9 et 10 réservent au Gouvernement de Sa Majesté Britannique le droit d'imprimer une certaine direction aux transactions de la Société, tant vis-à-vis des Puissances étrangères que de la population des contrées sur lesquelles s'étend la concession obtenue. L'Article 12 prévoit le cas que les employés de la Société seront chargés d'exercer la juridiction au nom de Sa Majesté la Reine d'Angleterre. Les Articles 13 et 14 subordonnent à l'approbation du Gouvernement de Sa Majesté Britannique la nomination du représentant principal de la Société sur l'Ile de Bornéo, ainsi que le choix du pavillon qui sera arboré par la Société. Par l'Article 15 le Gouvernement de Sa Majesté Britannique autorise la Société à construire, dans les contrées sur lesquelles s'étendent les concessions obtenues, des travaux d'utilité publique, à y faire des exploitations de mines et d'agriculture, à y affermer le tabac, l'opium, et le sel. L'Article 16 réserve au Gouvernement de Sa Majesté Britannique la faculté de s'immiscer dans les litiges qui pourraient s'élever entre la Société et des tiers par rapport à des droits sur une partie des contrées désignées dans les concessions obtenues par la Société.

"Il est difficile d'expliquer, M. le Comte, comment les diverses dispositions que je viens de rappeler peuvent se concilier avec l'intention bien arrêtée du Gouvernement de Sa Majesté Britannique de ne reconnaître à l'entreprise du Sieur Dent aucun caractère politique. Il semble de plus incontestable qu'une immixtion constante du Gouvernement de Sa Majesté Britannique dans les affaires et les transactions de la Société à créer, et dans ses relations avec les Puissances étrangères, les Chefs indigènes et les habitants du nord de Bornéo, sont en désaccord avec les intentions du Gouvernement de Sa Majesté Britannique, telles qu'elles vous ont été manifestées par Lord Granville, puisqu'une immixtion aussi constante équivaut de fait à l'exercice de l'autorité souveraine.

"Vous voudrez bien vous souvenir, M. le Comte, que lorsque le Gouvernement du Roi a eu connaissance de la portée des concessions obtenues par le Sieur Dent, ce Gouvernement a aussitôt exprimé sa conviction qu'il y aurait de graves objections à ce que le Gouvernement de Sa Majesté Britannique octroyât une charte 'qui ne fût pas d'une portée très restreinte, et rédigée de façon à enlever clairement et incontestablement toute signification politique aux entreprises en question.' Ce passage est emprunté à ma dépêche du 22 Janvier dernier, dont vous avez donné lecture à Lord Granville le 26 Janvier suivant, et dont vous avez laissé copie à son Excellence. Il vous sera donc facile à comprendre que l'impression qu'a fait naître au Gouvernement du Roi l'examen du projet de charte, n'a pu être que celle d'un profond désappointement. En effet, la promulgation de cette charte aura pour résultat de créer une Société investie de droits Souverains par les Chefs indigènes du Bornéo septentrional, et soumise, quant à l'exercice de ces droits, à l'autorité suprême du Gouvernement de Sa Majesté Britannique. D'autre part, cette autorité suprême restera, d'après les dispositions de la charte, sans effet au dehors, puisqu'en vertu de ces dispositions le Gouvernement de Sa Majesté Britannique n'entrera point, en raison de difficultés éventuelles entre la Société et des tiers, en communication directe avec ceux-ci, mais qu'il se bornera à donner ses ordres à la Société. Il en résultera un trouble profond dans les relations politiques existantes dans la partie septentrionale de l'Île de Bornéo, au maintien desquelles le Gouvernement du Roi a déclaré attacher de l'importance (voir ma dépêche du 11 Novembre, 1879, dont vous avez donné lecture à Lord Salisbury le 20 Novembre suivant, et dont vous avez laissé copie à son Excellence), auxquelles se trouvera substitué un état de choses que le Gouvernement des Pays-Bas croit pouvoir se permettre de qualifier d'hybride, et qui, d'après sa conviction intime, ne saurait produire de bons résultats.

"C'est en vain que le Gouvernement du Roi se demande à quoi peut servir la confirmation de concessions telles que celles que vient d'obtenir le Sieur Dent (qui, soit dit en passant, ne sont, à ce qu'il semble, plus de notre temps, ni en harmonie avec l'ensemble des droits actuels de Puissances Européennes dans les mers des Indes), et sous quel rapport l'octroi d'une charte comme celle qui vous occupe peut être considéré comme nécessaire, du moment qu'il ne s'agit, en réalité, que d'assurer au commerce et à l'industrie de sujets de Sa Majesté Britannique, un vaste champ d'opération dans le nord de l'Île de Bornéo. Rien ne saurait être plus éloigné de la pensée du Gouvernement du Roi que de vouloir s'opposer par des motifs d'envie ou de jalousie à l'exploitation de ce vaste champ par des sujets de la Reine; mais il nous semble que ce but eût pu être atteint, sans qu'il fût nécessaire de porter le trouble dans les relations politiques existantes de l'Île, sans donner naissance à une création rappelant le souvenir des anciennes Compagnies des Indes Orientales et Occidentales, et pouvant susciter les mêmes complications que celles auxquelles donnèrent lieu jadis ces institutions mi-commerciales, mi-politiques, et enfin sans étendre l'ascendant de l'autorité Britannique sur le nord de l'Île de Bornéo, pouvant faire revivre la confusion d'influences Européennes dans l'Archipel Indien, à laquelle le Traité du 17 Mars, 1824, avait pour mission de mettre un terme. Le Gouvernement du Roi est convaincu qu'il suffirait amplement à l'encouragement et à la protection du commerce et de l'industrie de sujets Britanniques si le Gouvernement de la Reine se bornait à promulguer une charte dans le genre de celle qui fut octroyée dans le temps à la 'Eastern Archipelago Company,' et à établir dans le nord de l'Île de Bornéo un ou plusieurs Consuls chargés de veiller aux intérêts de l'entreprise Britannique et d'exercer la juridiction consulaire là où le besoin s'en ferait ressentir.

"Il nous semble résulter de ce qui précède, M. le Comte, qu'au point de vue du Gouvernement de Sa Majesté Britannique, lequel a déclaré ne désirer ni une entreprise ayant un caractère politique, ni l'établissement de la souveraineté Britannique dans le nord de Bornéo, il y avait des motifs plus que suffisants pour refuser l'octroi d'une charte à une Société qui s'était fait concéder des droits souverains par des Chefs indigènes. Le Gouvernement de Sa Majesté Britannique eût pu trouver un motif plus spécial de ne point adhérer aux concessions obtenues, en ce-dans une mesure aussi peu limitée que l'indique le projet de charte, dans la communication annexée dans votre dépêche à Lord Granville du 8 Avril dernier, d'où il appert que ces concessions concernent les limites des possessions Néerlandaises de la côte orientale de l'Île de Bornéo, et qu'ainsi elles renferment tout au moins sur ce point une cause pouvant donner lieu à des difficultés avec une Puissance amie.

"L'extrême urgence que le Gouvernement du Roi, afin de se conformer au désir du Gouvernement de Sa Majesté Britannique, a dû apporter à l'examen du projet de charte et au résumé des objections que cet examen lui a suggérées, doit nécessairement lui interdire de se livrer, à ce sujet, à de plus amples développements. Il est néanmoins en droit de l'espérer, que ce qui précède aura pu suffire à faire connaître sa manière de voir avec une entière évidence. Il croit, en terminant, devoir inviter le Gouvernement de Sa Majesté Britannique, de la façon la plus pressante, à vouloir bien examiner une fois de plus le projet de charte, en prenant en sérieuse considération les arguments que je me suis permis de faire valoir dans la présente dépêche. Le Gouvernement du Roi peut à peine douter, qu'en agissant ainsi, le Gouvernement de Sa Majesté Britannique ne doive arriver à se persuader que la tendance du projet est effectivement en contradiction avec les intentions formelles qui, en Juillet 1880, et en Janvier 1881, vous furent communiquées par Lord Granville, et qu'il ne saurait être opportun d'octroyer, conformément à ce projet, une charte en faveur de la 'British North Borneo Company.'

"En vous priant, M. le Comte, de donner lecture à Lord Granville de la présente dépêche dans le plus bref délai possible, et d'en laisser copie à son Excellence, je saisis, &c.

(Signed) "DE LYNDEN DE SANDENBURG."

The meeting of the Committee was adjourned to the 19th August.

On the 26th an Order in Council was passed for the issue of the Charter.

The formalities were completed in November, and the Charter was published in the "Gazette."

On the 21st November Lord Granville addressed the following despatch to Count Bylandt:—

"M. le Ministre, "*Foreign Office, November 21, 1881.*

"On the 13th August last you were good enough to communicate to me a despatch, dated the 11th of that month, which had been addressed to you by Baron Lynden de Sandenburg, containing the reply of the Netherlands Government to the communication of the draft Charter of the British North Borneo Company, a copy of which accompanied my letter to you of the 28th July last.

"I have now the honour to inform you that the arguments set forth in the Baron de Sandenburg's despatch against the issue of the Charter were duly considered by Her Majesty's Government, who, however, have found themselves unable to concur with the Netherlands Government in their appreciation of the meaning and objects of the Charter, or in any of the apprehensions which they express on the subject.

"I have to request the consideration of your Government, M. le Ministre, to the following observations:—

"The territories ceded to Mr. Dent will be administered by the Company under the sovereignty of the Sultans of Brunei and Sulu, to whom they have agreed to pay a yearly tribute. The British Government assumes no sovereign rights whatever in Borneo; and, indeed, the Charter contemplates the appointment of British Consuls in the territories of the Company.

"But whilst *Her Majesty's Government* approve the undertaking, they have not sanctioned it without exacting guarantees and imposing certain restrictions and conditions on the Company for the protection of the native population, the adjustment of boundaries, and the settlement of any questions which may arise between them and the Sultans, or any foreign Governments. These guarantees, Her Majesty's Government consider, could only have been ensured, and these conditions imposed, by a Royal Charter of Incorporation.

"It is unnecessary to go over the ground of discussion which has formed the subject of previous correspondence; but, as regards the comments of the Netherlands Government on the Articles of the Charter, generally adverted to, it is to be observed that Article IV only reproduces the clause in the Treaty between this country and the Sultan of Brunei, which prohibits him from alienating his territory without the consent of Great Britain.

"Articles V, VI, and X were inserted for the protection of the natives, and in order to obviate, or at all events to dispose of, the very difficulties and complications which the Netherlands Government appear to apprehend, and, as it seems to Her Majesty's Government, unduly magnify.

"Article XI (which is referred to inadvertently as Article XII) is only intended to preserve the rights of ex-territorial jurisdiction already possessed by Her Majesty's Government by Treaty.

"Article XIII (requiring the approval by the Secretary of State of the chief officer of the Company) is only intended to afford a guarantee for the proper administration of affairs; and Article XIV (placing a restriction on the flag of the Company) is necessary to prevent any unjustifiable use of the British flag. Article XV is merely declaratory of the general powers which are vested in the Company by virtue of their concessions from the Sultans, and of certain powers commonly inserted in commercial Charters. Article XVI was especially framed with a view to the settlement of the questions of boundary which have been raised by the Netherlands Government.

"Your Government, M. le Ministre, will, no doubt, readily admit that, as a matter of international right, they would have no ground whatever to object to the absolute annexation of North Borneo by Great Britain, had any Treaty arrangements for that purpose been in contemplation. Her Majesty's Government, therefore, are at a loss to understand the opposition of the Netherlands Government to the confirmation by Charter, under proper guarantees, of this private undertaking, which has been peacefully and successfully conducted during the last three years, and which promises to open up an important field to commercial enterprise, to the manifest advantage of the native population, and certainly not to the detriment of the neighbouring territories under Netherlands rule.

"Having the foregoing considerations in view, the arguments advanced by the Netherlands Government against the grant of the Royal Charter were not considered to afford any substantial grounds of objection, and Her Majesty's Government having therefore decided to grant the Charter, I have now the honour to inclose a copy of this instrument for the information of the Netherlands Government, as finally settled and published in the 'London Gazette.'

"I have to request, M. le Ministre, that you will assure your Government that the decision of Her Majesty's Government upon this question was delayed as long as possible, to enable the Netherlands Government to put forward all the objections they had to offer; but in view of the important private interests involved, and of the great length of time during which the grant of this Charter has been under consideration, Her Majesty's

Government did not feel justified in delaying any longer the solution of the question.

"Her Majesty's Government cannot but feel that the foregoing explanations should be sufficient to satisfy the Netherlands Government that they have misapprehended the bearing of this Charter, which they submit to be in no way inconsistent with the assurances on the subject which have already been conveyed to them.

"I have, &c.

(Signed) "GRANVILLE."

On the 3rd December the Spanish Minister communicated the following despatch to Lord Granville:—

*The Marquis de la Vega de Armijo to the Marques de Casa Laiglesia.*

"(Translation.)

"*Ministry of State, Political Department,*

"Sir, "*November 16, 1881.*

"In the despatch from your Legation of the 8th instant I have received a copy of the 'London Gazette,' containing the text of the Charter granted by Her Britannic Majesty on the 1st instant to the British North Borneo Company to establish itself in the said territory.

"By this public act the Spanish Government has, with the greatest pain, seen disregarded the repeated representations which it has had occasion to address to Her Majesty's Government since the arrival of the news of the negotiations of the agents of the above-mentioned Company to obtain the protection and authorization of the British Government to occupy territory which, as it forms part of the dominions of the Sultan of Sulu, belongs by right to the Spanish nation; as is established by historical documents and by Treaties formally concluded.

"In the long correspondence which has taken place during recent years between my predecessors in this Department and the Representative of Great Britain at Madrid, there has been set forth at length the basis on which the sovereignty claimed by Spain rests, in virtue of titles which date back to the seventeenth century, and which have been confirmed by various Capitulations, wherein our right is established to all and to each of the possessions of the Sultan within and without the Sulu Archipelago.

"This is not an opportune moment to recapitulate the foregoing circumstances; but we maintain and confirm all that the Spanish Government has stated and alleged up to the present time in support of the right which is on its side.

"In view, then, of the authorization which Her Majesty's Government has granted to an English Company to establish itself in North Borneo, under the pretence of the territories in question having been ceded by the Sultans of Brunei and Sulu, I comply with the painful but unavoidable duty of protesting, in the name of the Spanish Government, in the most positive and formal manner, against all the acts, agreements, and orders which may relate to the whole or to part of the dominions of the Sultan of Sulu, which we declare and maintain belong to the sovereignty of the Spanish nation, in conformity with the Capitulations signed with the Sultans and Dattos of Sulu on the 23rd September, 1836, and the Additional Act of the same of the 30th August, 1850; the Act of Submission to the sovereignty of the Queen of Spain of the 19th April, 1851; and, lastly, the Capitulations of Peace signed by the Sultan on the 22nd July, 1878, and confirmed by his successor on the 10th April, 1881, when he occupied the throne of his father.

"We declare, moreover, that as the sovereignty of Spain has been acknowledged by repeated acts of the Sultan of Sulu and of his Dattos in the Archipelago, the former could not grant or alienate in any way his dominions in a part of North Borneo without the consent of Spain, according to what has been expressly stipulated in the Capitulations, and that therefore the cession of the above-mentioned concessions are null and void, in exactly the same manner as was null and void the Treaty entered into on the 30th May, 1849, by Sir James Brooke and the Sultan of Sulu, which was annulled in consequence of the representations made by Spain, and of her evident right to the sovereignty of those dominions.

"Having fulfilled the duty of protesting against the results of an act injurious to Spanish interests and to the territorial rights of the Crown of Spain, the Spanish Government yet trusts that Her Majesty's Government, influenced by the friendly relations which have never ceased to exist between both nations, and in order that nothing may for a moment disturb in the slightest degree their friendly understanding, will cancel the authorization granted to the Company, at least insomuch as it relates to its establishment in the part of North Borneo alleged to have been granted by the Sultan of Sulu.

"You will please read this despatch to the Minister for Foreign Affairs, and leave a copy with him, if he desires it.

"I state this to you, by Royal order, for your information and for the purpose mentioned.

"God preserve, &c.

(Signed) "EL MARQUES DE LA VEGA DE ARMIJO."

On the 7th December Lord Granville addressed the following despatch to Her Majesty's Minister at Madrid:—

"(No. 164.)

"Sir, "Walmer Castle, December 7, 1881.

"The Spanish Minister called at the Foreign Office on the 3rd instant and handed to me the despatch from the Marquis de la Vega de Armijo, of which I inclose a translation herewith,* protesting against the issue of a Royal Charter to the North Borneo Company, reiterating the claim of the Spanish Government to the sovereignty over that portion of Borneo which they hold to belong to the Sultan of Sulu, and declaring that any territorial grants made by the Sultan to the Company are, in consequence, null and void.

"The Marquis de Casa Laiglesia reverted to the subject in conversation with me to-day.

"I said that, on the previous occasion, when he had read to me the substance of the despatch, I had begun to observe to him that we did not admit the contention of the Spanish Government, when he had interrupted me by saying, 'And we do not admit your contention.'

"This seemed to me to represent pretty accurately the present state of the question. There was on either side a denial of the validity of the titles and arguments advanced by the other, and it was difficult to see how a continuance of the discussion on this footing could lead to any satisfactory conclusion.

"The Spanish claims might be described as paper claims, inasmuch as they had never been acted upon, and the Spanish Government on more than one occasion had declared that it was not their intention to do so. I could not, therefore, conceive that the material interests of Spain were really injured by the cession made to the Company.

"We, on the other hand, in concert with the German Government, had declined to recognize the sovereignty claimed by Spain over the dominions of the Sultan, whether in Borneo or in the Sulu Archipelago; but in consideration of the conditions given for freedom of commerce by the Protocol of the 11th March, 1877, we had refrained from actively opposing the extension of Spanish authority over the Archipelago. I said that the arguments contained in the despatch were those which had been previously used, and which had been answered by the English and German Governments. Under these circumstances, I supposed that the request that we should cancel the Charter was only a formal mode of protesting, as we could hardly be expected to recede from a measure which had only been adopted after much care and consideration.

"It seemed to me to be worthy of consideration whether the present opportunity should not be taken to come to some arrangement by which we should formally recognize the right of Spain to exercise jurisdiction in the Sulu Archipelago, subject to the stipulations of the Protocol I had referred to, while the Spanish Government should in return abandon what was, in fact, a merely nominal claim over a certain undetermined portion of Borneo.

"The Marquis de Casa Laiglesia promised to report my suggestion to his Government, and said that, personally, it seemed to him calculated to lead to a satisfactory solution.

"I explained that, if the proposal were favourably considered by the Spanish Government, I would immediately communicate with the German Government, whose concurrence would be required for such an arrangement.

"I am, &c.
(Signed) "GRANVILLE."

In connection with the last preceding despatch, I would refer to the following Memorandum by the German Ambassador, showing that his Government are no longer disposed to offer much opposition to Spanish sovereignty in the Sulu Archipelago, provided the Protocol of Madrid be strictly observed:—

*Memorandum communicated to Earl Granville by Count Münster, February 7, 1881.*

"(Translation.)

"The Reports from the British officials and ship-commanders on the state of things in the Sulu Archipelago, which the British Government has had the goodness to communicate to the Imperial Government, show that the Spaniards have not been guilty of an act of violation of the stipulations of the Madrid Protocol of the 11th March, 1877, regulating the commercial and shipping traffic in the Sulu Archipelago.

"The Imperial Consul at Singapore, too, who has been directed to keep an eye on the affair, reported again, at the end of September last, that according to his information the Spanish authorities and Commanders of Spanish war-ships had been careful to avoid everything that could afford the Imperial and the Royal British Government any occasion for complaints in regard to violations of the Sulu Protocol.

"The Spaniards have not hitherto attempted to encroach in any way on the freedom of the commercial and shipping traffic in places which are not really occupied by them in the sense of the Madrid Protocol.

"Those who signed the Protocol had decided, after long preliminary negotiations, to pass over the sovereignty question in that Act, and only to take precautions against further attempts by Spain to restrict the freedom of traffic in the Sulu Archipelago altogether unwarrantably.

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* See p. 21.

"In so far as it is required to impress on the Spanish Government that the Treaty with the Sultan of Sulu concluded in February 1878 cannot prejudice the rights of Germany and Great Britain arising from the Madrid Protocol of the 11th March, 1877, Germany, in common with England, has secured those rights by corresponding notes of the two Representatives at Madrid in May 1879.

"Under these circumstances, the Imperial Government considers it more expedient to rest satisfied with that fundamental security until Spain shall give it a just cause for reclamation by an actual violation of her obligations under the Madrid Protocol.

"In order to give outward manifestation also of the continuance of German interest in the maintenance of the stipulations of the Madrid Protocol, the Commander-in-chief of the Imperial war-ships in East Asia was some time ago instructed to let the flag be shown occasionally by Imperial gun-boats in the Sulu Archipelago, and, as has been done by the English, the Commanders will pay a visit to the Sultan of Sulu at Maimbung, and to the Spanish Governor at Sulu. The Imperial Government will take care that the consequently expected reports from the Commanders as to what passes under their observation shall also be forwarded to the British Government."

As regards Borneo, however, it will be seen, from Mr. Wyndham's despatch No. 220 of the 27th August last, that shortly before that date Señor Elduayen, the Spanish Minister for Foreign Affairs, was informed by Count Solms, the German Representative at Madrid, that Germany had no wish to establish Colonies in Borneo, *but that they, nevertheless, did not acknowledge any right of sovereignty whatever on the part of Spain in the north-east of Borneo as claimed by her in her Treaty with the Sultan of Sulu.*

The importance of Northern Borneo to Great Britain as regards its political, strategical, and commercial advantages has been fully demonstrated by Sir E. Hertslet in his Memorandum before referred to; and, in addition to the authorities cited by him, I would refer to the Report of the Meeting held on the 26th March, 1879, at the Buckingham Palace Hotel, for the discussion of the affairs of Borneo, and the Appendix to that Report, containing extracts from the works of Sir Spenser St. John and others on Borneo.

§ The following letter from Sir Rutherford Alcock to Lord Salisbury also deserves careful attention:—

"(*Private and Confidential.*)

"*14, Great Queen Street, Westminster,*

"Dear Lord Salisbury, "*October 28, 1879.*

"I have communicated the purport of your Lordship's letter to the gentlemen chiefly interested in the British Borneo Company, and they would be glad to be received in deputation, any day towards the end of next week which it might be convenient to you to fix.

"I should have liked to avail myself of the permission to wait upon you any day this week, prior to the reception of the deputation, but fearing your Lordship's engagements may not allow this double tax upon your time, I venture to submit a few observations bearing on the political aspect of the enterprise or [illegible] in writing, because it would in many respects be undesirable that this part of the subject should be discussed by a deputation, and thus be made more or less public.

"The commercial advantages to be anticipated from the occupation of the concession by a British Company—and the practicability of this being done at the present time, if under the sanction of Her Majesty's Government by charter or otherwise, without entailing expense on the country, or responsibility to the Government for its administration and protection—beyond that which is inseparable from the nationality of those engaged in developing its resources, the deputation will of course be enabled to enter into fully. Great, however, as these advantages may be in furnishing a new field for enterprise, and the employment of capital in small amounts, so as to be within compass of large numbers seeking new ground for investments and industry, as coffee planters, &c., I am more strongly impressed with the importance in a political and strategical point of view of securing this midway station between Hong Kong and Singapore, to the exclusion of any other foreign Power. Apart from the facilities it will give for the extension of our commerce generally in the eastern seas, by reason of its excellent harbours and abundant coal supply, of which there seems to be satisfactory evidence, offering a great advantage in time of peace, the occupation of this position in the eventuality of a war, assumes an importance of a very different order.

"A glance at the maps accompanying the memorials already in your Lordship's hands, will suffice to show that the harbour of Gaya, on the north-west coast, almost unrivalled in extent, nearly from both monsoons, and susceptibility of easy defence, would be of inestimable value to this country. Its occupation by a hostile, or even a neutral power, in the event of a war would offer facilities of attack fatal to the security of our commerce in the China Seas. It lies right in the fair way of a trade amounting to some 40,000,000l., nine-tenths of which is under the British flag, and yielding a revenue of between seven and eight millions sterling on opium to the Indian Government, and not less than three millions, in Customs dues on tea, to the British Exchequer. The whole of these large interests of trade and revenue might be lost, and would certainly be jeopardized and greatly damaged, by two or three "Alabamas," or cruisers of a hostile Power issuing from such a secure harbour of refuge, within two miles of the direct line of traffic. It is, moreover, the only harbour in the long stretch of 1,200 miles between the two great centres of Hong Kong and Singapore, and is south of the typhoon limits, no small advantage.

"In these views Admiral Sir Henry Keppel, a high authority in all that relates to Borneo and the adjacent seas, and General Cavenagh, I have reason to believe, entirely concur; as well as merchants and others largely interested in the China trade.

"There is another fine harbour on the eastern side of the concession, Sandakan, of considerable value in its bearing on a growing British trade between Australasia and China. But as regards the port of Gaya, it would appear a matter of vital importance to Great Britain in the event of a war with any maritime power, that it should not be in other hands than our own. In possession of a foreign neutral power, the injury might be even more irremediable, because we could neither take nor blockade it consistently with international law.

"Your Lordship is, of course, best able to judge how far such a contingency as a war, say, with Russia, or France, or Germany, can be fairly considered within the limits of the political horizon. But when General, then Colonel, Cavenagh, was sent by Lord Canning as Governor of Singapore, it was not thought at that time improbable, France, already at Saigon, might, in case of a coalition with Russia, give cause of anxiety. As to the Russians at this day, their surrender at Kuldja may not improbably have in view some compensation on the Pacific coast, while in the quarrel brewing between Japan and China respecting the Loochoo Islands, it is not improbable they may have some part. At all events, after largely reducing her navy in the Black Sea, she is certainly strengthening her naval forces on the Pacific coast. Recent advices show that a squadron has started for Yokohama, to be stationed there, in which an iron-clad frigate for the first time will appear, while the rest of the squadron will be cruisers.

"I will not venture further to trespass on your Lordship's time, but I feel that there are points it would not be fitting the deputation should ventilate, while, at the same time, it is deemed essential that in any decision Her Majesty's Government may take, this bearing on the policy of authorizing the occupation of the concession, should be fully considered and weighed.

"I have, &c.
(Signed) "RUTHERFORD ALCOCK."

The British trade with China referred to in the above letter is estimated by Sir T. Wade* to amount now to at least 50,000,000l. sterling annually. I may add that the harbour of Gaya, on the north-west coast of Borneo, is opposite to Saigon, and that the French press are advocating the annexation of Annam. The Chambers have voted nearly 3,000,000 fr. "to meet expenses of the suppression of piracy on the Red River" (the great river of Tonquin), and the Chinese Government, who suspect an intended coup de main on Tonquin, are at the present time in communication with the French Government on the subject, through the Marquis Tseng, now in Paris.

As regards the attitude of the natives of North Borneo towards the new Company, the following extracts, furnished by Mr. Dent to this Office, from the Reports of his agents, show that there is no ground for apprehending disorders, but, on the contrary, that their advent is welcomed everywhere, and is already exercising a great civilizing influence.

*Mr. Leicester.*—Mr. Leicester, Acting Assistant Resident of Papar, writes as follows on the 1st October, 1879:—

"I have pleasure in reporting most favourably on the friendship evinced towards us by the Datu, Tumunggong of the Dusuns, which promises to be permanent."

*Mr. Everett.*—Mr. Everett, who held an official position under Rajah Brooke for some years, and was appointed Resident of Papar Station in 1879, writes on the 18th September, 1879, as follows:—

"The people appear to be more docile and more industrious than the otherwise not dissimilar tribes which people the Sarawak and Baram coast districts. In their rice cultivation they are far advanced beyond any of the Sarawak tribes, and rather approach the natives of the Philippines.

"*October* 25, 1879.—I may say that the favourable impression which I gained at Papar of the people of the district has been much strengthened by my visit to Kimanis, which seems to have been more influenced by the contiguity of Labuan.

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* See Sir T. Wade's No. 13 of January , 1880.

"*January* 9, 1880.—It will be such a terrible day for the natives if the Company withdraws that I feel impelled to speak out."

*Mr. Pryer.*—Mr. Pryer, who was appointed Resident of Sandakan in 1878, writes:—

"*April* 7, 1878.—I have endeavoured to cultivate friendly relations with the leading natives, and have met with considerable success.

"*March* 22, 1879.—The fact is, the natives of these parts are an exceedingly timid race.

"*June* 1, 1880.—At the bazaar village of Upak, where I went on a visit of inspection, I had a most gratifying reception. The real cordiality shown me proved that it was not a mere official reception, but that the true feeling of the people was being exhibited."

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*Extract from Diary of a Trip up the Kina Batangan River, by W. B. Pryer, Resident of Sandakan, 27th February,* 1881.

"It is a satisfaction to find that the bare knowledge that an Englishman is in the country has stopped murders and human sacrifices, and has confined fierce head-hunting tribes within their own boundaries; has put an end to 'Bintang Mazrow' and its accompanying horrors; has caused the fierce Islanders, in a great measure, to abandon piracy, and has put a stop to an incalculable amount of misery, but plenty yet remains to be done."

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*Extract from Letter dated Elopura, June* 5, 1880, *to his Excellency C. C. Lees, Esq., Governor of Labuan, from Mr. Pryer.*

"The present would appear to be not an inappropriate moment for reviewing the progress that has been made here in little over two years.

"When I arrived here in 1878 I found the only place in this bay to be a small village hidden away in an obscure corner in the far end of the bay. The entrance was frequently blockaded by pirates, and the reason I had assigned to me for the small trade with surrounding islands was the danger of the navigation caused by them. There were two Chinese traders only. The important River Kina Batangan was blocked up by a jealous and suspicious Chief.

"The knowledge of and trade with the interior of the country was virtually nil. The coast-line was in the hands of the rapacious Sulus, by whom the Indians of the foreshore (Bajows) were ground down and oppressed in every way. The Indians of the forest (Buludupies) were found to yield to their exactions to such an extent that but very few years more would have witnessed the extermination of large sections of them. They had all but abandoned their fields and orchards. (The Indians of the interior, Dyaks, of whom virtually nothing was known, did their best to keep themselves to themselves, as far from the Sulu's extortions as possible.) As for the trade of the district at that time, the little 'Far East' left intervals in her calling here sometimes of two or three months' duration, and when she did come brought very little cargo, and sometimes none at all, and took away nothing to speak of except the bird nests from one locality alone. Slavery was rampant, slave-boats containing cargoes of unfortunate, starved wretches, in such a state that it turned one's stomach to look at them, covered with sores and ulcers, and many of whom certainly died, were frequently to be seen here or in the Kina Batangan; robbery was so rife, murders were drawn upon the slightest occasion, there was no security for either life or property, debts were unrecoverable, slaves were used in the most atrocious way, being occasionally cut down or thrashed, and afterwards having washed green chillies rubbed into the wounds. The rich soil of the country was all but entirely uncultivated, as the proceeds would certainly have been taken by the nearest man with any power when ripe—and, in fact, it is simply difficult to say in what way matters could have been in a more deplorable condition.

"Now, Elopura, placed on a commanding and carefully-selected site, at the very entrance of the harbour, monthly gains in population and importance. Over a dozen Chinese traders do an increasing trade with all the rivers of the coast; the Kina Batangan, opened by me to traffic in 1878, sends away 10,000 bundles of rattans a-month, besides other produce. I have communicated with the Chiefs of the Interior, who are anxious to receive the new Government, to send their goods down for sale on an open, free market. The Indians of the foreshore, freed from their Sulu oppressors, and consolidated, as far as their habits allow them, into a powerful body, offer to place 100 canoes at my disposal for any emergency. The Buludupies, able to cultivate their crops in peace now, have wide and every season increasing paddy-fields. Slave-boats are a thing of the past; two steamers call regularly monthly. The price of rice is reduced to less than half what it was. Crime is simply unknown; the Chinese do not even require to fence their kitchen-gardens. The now hard-working Sulus are beginning to clear away the forest for farms, with the knowledge that they can sit down in their houses without fear of being kidnapped in the middle of the night and sold as slaves, or, at the best, that a considerable part of their crops will be taken by some one else. As to the pirates, the people of these parts, disgusted with the name of anarchy, and finding a strong helping hand behind them, put such pressure upon them that they have moved off, bag and baggage, to Palawan. The "Kestrel's" visit is much to be praised, and this Sulu Dato, formerly a synonym for rapacity and injustice, under proper guidance is developing into a very efficient Police Magistrate.

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### *Protest of Chiefs of Sandakan against Spanish Occupation.*

*Enclosure in Letter dated September 7, 1878, from Mr. W. B. Pryer.*

"We, the following Datoos and Chiefs of people of the Bay of Sandakan, North Borneo, protest against the hoisting of the Spanish flag at Sandakan, or elsewhere, in these parts. We have taken no part in any wars between Spain or Sulu; no pretence has ever been made during previous visit of Spanish man-of-war to exercise any authority over us. We have never received information of any arrangement in any way affecting us, and before any such Treaty could be made, we, according to the laws of Sulu, should be consulted. Without the matter being referred is illegal; and anyhow we protest against the hoisting of the Spanish flag on any pretence whatever.

"We also wish to state that the matter of the transfer of this country to an English Company having been referred to us by the Sultan six months ago, we have agreed to that transfer and are bound by it.

(Signed) "DATOH HADJEE.
"TUAN IMAM.
"NACHID OOTONG.
"DATOH DOCOLAH.
"DATOH DOONDING.
"MOHAMED ASCAH.
"GUMBA.
"S. ABDUL WAHAB."

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"*Mr. Walters.*—Mr. Walters was appointed Mineral Explorer at Sandakan, and on the 12th June, 1880, writes:—

"'I have, in my peregrinations here, seen a goodly number of the various tribes, although my means of locomotion are neither strong nor swift; but although, on arriving amongst the villages, the people were a little reserved and shy, this was soon forgotten, and we were as friends renewing an old acquaintance. I have been invited to stay and live amongst them, when up the Labuk, among people who had never seen a white man; in fact, they told me that I was the first European that had ever been up the Labuk River. At this interview I was without my jacket, and the sleeves of my shirt being short, my arms were exposed. Young women came and rubbed their cheeks against the skin; mothers brought young children, and followed the example. At every place I have been bountifully supplied with the produce of their plantations and gardens, and regret was freely expressed on my departure. At several places much disappointment was evinced that this Government had not as yet been extended to them, and more attention given to them. I always told them to live peaceably, and Government will soon be with them, &c., &c., as their request is a just one.

"Mr. Walters finishes his Report thus:—

"'Permit me to conclude by saying that your noble enterprise has the best wishes of thousands in the far East, filling in as it does this blank in one of the largest islands of the world, and opening up to civilization and commerce a country hitherto the seat of piracy, slavery, and bloodshed.

"I have, &c."

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"*Mr. Pretyman.*—This gentleman was appointed an Agent of the Company in 1878, and opened a station at Tempasuk early in that year. On the 21st June, 1878, he writes:—

"'On arriving here on the 24th April, I commenced at once to try and find out the position of the Native Chiefs, and the number of their followers, the character and raison d'être of the different tribes in my immediate neighbourhood.'

"After describing these tribes, he says: 'The Dusuns hail our arrival with great pleasure, as they think that our presence will save them from Bajaus' ill-use. They have already asked for an officer to be sent to live among them, and promise obedience to the Government for the future. Since yesterday, I am glad to report that I have brought about peace between the Dusuns and Bajaus, as a late outbreak against the Bajaus was nearly culminating in a war between the tribes.

"'My one continued effort has been to gain the friendship and goodwill of the tribes, and my further endeavours have been centred on a determination to have the Government respected, and I think I have succeeded in carrying to a proper conclusion any matters in which I have thought it necessary at the present time for me to interfere in.'

"After visiting the people in Marudu Bay, and reading the Sultan's Proclamation respecting the cession of the territory, he writes:—

"'The Chiefs on the Bongon side all met me, heard the Proclamation, and gave me their hands as proof of their adhesion; there are 100 Islams and 2,000 Dusuns. I was most cordially received by them, and they treated me when sick very much like old friends. *I call it a great success.*'

"*Mr. Witti.*—Since the beginning of 1880 this gentleman has made two journeys into the interior, visiting many tribes hitherto unvisited by any white man. Everywhere he was received with kindness, and says: 'Whenever the lords of the Company were mentioned by the natives, it is with respect, with liking, and with hope of advantage from the government of the white men.' He noticed an instructive trust on the part of the natives of the interior, which, he says, 'bids fair for the spread of the Company's influence in the upper country.'

"On the 12th January, 1881, writing from Papar, he says: 'I happened to partake of some fish, which made me break down with all the symptoms of poisoning. When the news spread that the white man was going to die, the Dusuns came, and the Bajaus and the Illanuns too; and they all showed that the Company's officer is no longer looked upon as an intruding stranger. I mention this for the satisfaction I feel in the interest of our own cause, in view of such a manifestation from indolent natives.'

"*Mr. Dobree.*—Extracts from the Report of Mr. Dobree, of Ceylon, who visited the Company's territory in 1879:—

"'The Company had only established their agents at Papar and Tempasuk about four months at the time of my visit; since then, however, they have commenced the organization of a police force at all the Residencies, and since leaving I have had very good accounts of the confidence and good-will displayed by the natives of the coasts towards the agents of the Company, and I feel confident that this will continue, for they find themselves so much safer and better off than under the old rule.

"'At Tempasuk the Government is more established, and Mr. Pretyman has succeeded, in a very short time and under difficult circumstances, in gaining the respect of the natives and their Chiefs, Illanuns, Bajaus, and Dusuns.'

"'There are no powerful fighting tribes in any part of the country, as there are at Sarawak, so that there need be no difficulty or bloodshed in establishing order and security throughout the country.'"

To the above Reports may be added those of our Naval Officers.

The following Report was furnished by the Admiralty to the Foreign Office in April last:—

"My Lord, "*Admiralty, April 13, 1880.*

"I am commanded by my Lords Commissioners of the Admiralty to transmit, for the information of the Secretary of State for Foreign Affairs, copy of a letter from the Commander-in-Chief on the China Station, dated the 9th March last, in which he reports that, in his recent visit to [illegible] and Sandakan, on the north-east coast of Borneo, in the possession of the agents of Messrs. Overbeck and Dent, he was very favourably impressed with the influence for good manifestly possessed by them over the natives, and suggests that it would add to the prosperity of the people if the political aspect of the question would permit of Her Majesty's Government recognizing the status of Messrs. Overbeck and Dent in the country.

"A similar communication has been sent to the Colonial Office.

"I am, &c.
(Signed) "ROBERT HALL."

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### Inclosure.

*Vice-Admiral Coote to the Secretary to the Admiralty.*

"'*Iron Duke,' at Hong Kong,*
"Sir, "*March 9, 1880.*

"I have the honour to request that you will be pleased to bring to the notice of the Lords Commissioners of the Admiralty that in my recent visit to [illegible] and Sandakan, on the north-east coast of Borneo, in the possession of the agents of Messrs. Overbeck and Dent, I was very favourably impressed with the influence for good manifestly possessed by them over the natives.

"2. These people apparently look up to the agents as to their lawfully-constituted governors, and seem most willing to be led by them into the paths of industry and commercial enterprise.

"3. Should the political aspect of the question permit of Her Majesty's Government recognizing, at an early date, the status of Messrs. Overbeck and Dent in the country, I am of opinion that it would add materially to the prosperity and security of the people, to the development of the country, and open up new markets for our own home and colonial produce.

"I have, &c.
(Signed) "R. COOTE."

In September 1880 Commander Johnstone, R.N., of Her Majesty's ship "Egeria," reported as follows on the Company's Settlement at Elopura:—

"The new Settlement of Elopura at Sandakan appears to me to be very promising; the Chinese are laying out money, and the place had made some advance since our last visit two months before. The administration appears to be very well carried on, and the Government to be popular with the natives."

In February last Commander Corfe, on his return from a cruise, reported as follows as to the north-east coast:—

"The general impression I have formed from my late cruise is that an increased confidence and desire to trade with the British is manifesting itself among the natives, especially on the east coast of Borneo and neighbouring islands, and that acts of piracy are now of rare occurrence, and likely altogether to cease provided English men-of-war occasionally show themselves."

In May last Captain Mead, R.N., of Her Majesty's ship "Modeste," reported as follows respecting Sandakan and Elopura:—

"A considerable change has taken place in Sandakan since I was there two years ago. The little community then lived 10 miles up the harbour, but they were burnt out, and in June 1879 shifted the Settlement, which is now called Elopura, close to the entrance of the harbour on the north shore. Elopura is increasing and flourishing, and in time will no doubt become a place of some importance. The population now numbers 800 souls, and is made up of Chinese, Sulus, and Malays. They have cleared a considerable space, and a fair road runs through the Settlement. One steam-launch is built and another one building; the engines for both are shortly expected from England. The principal exports are gutta-percha, tortoise-shell, rattans, and birds'-nests. The value of these for the year—

| | Dollars. | Dollars. |
|---|---|---|
| 1878 .. .. .. .. .. .. | | 32,000 |
| 1879. Customs Returns .. .. .. .. | | 38,470 |
| Half-year to the 30th June, 1880 .. .. | 47,081 | |
| Half-year to the 31st December, 1880 .. | 52,532 | |
| | | 99,613 |

"And of the imports for the year—

| | | |
|---|---|---|
| 1878 .. .. .. .. .. .. | | 18,000 |
| 1879. Customs Returns .. .. .. .. | | 23,622 |
| To the 30th June, 1880, as per Returns .. | 33,190 | |
| To the 31st December, 1880, as per Returns .. | 31,541 | |
| | | 64,731 |

Three maps are attached to this Memorandum:—The first showing the extent of the former Dutch possessions in the Eastern Archipelago (1824-46). The second showing the islands now included in the Dutch East Indian possessions (1880). The third showing the territories ceded to Mr. Dent in North Borneo, and those ceded to Sir J. Brooke, and now in his occupation, as Rajah of Sarawak, under the Sultan of Brunei.

## Conclusion.

It will be seen from the preceding account that the "British North Borneo Company" are established under *three* Charters.

1. The Charter and territorial Concession from the Sultan of Sulu.

2. The Charter and territorial Concession from the Sultan of Brunei.

3. The British Charter of Incorporation.

The first two Charters, from the Sultans of Sulu and Brunei, are those under which the Company derive their title to the territories in question, and their authority to administer the government of those territories under the suzerainty of the Sultans.

The third Charter is the British Charter, under which the Company have obtained incorporation and a recognition by Her Majesty's Government of their title to the territories ceded. In return for incorporation by Royal Charter, and for the recognition of their concessions, they have surrendered to Her Majesty's Government a control over their powers of administration. The British Charter declares in general terms the scope of the powers conferred on the Company by the Sultans, and contains provisions amply sufficient for the prevention by Her Majesty's Government of any abuse in the exercise of those powers. It is important to bear in mind that no such right of control would have been reserved to the Crown had the Company sought incorporation in the usual manner by registration under the Companies Acts, and had elected to take their own course independently of Government support.

The British Charter therefore differs essentially from the previous Charters granted by the Crown to the East India Company, the Hudson's Bay Company, and other associations of that character, from the fact that the British Crown in the present case assumes no dominion or sovereignty over the territories to be occupied by the Company, nor does it purport to grant to the Company any powers of government thereover, but simply recognises the grants of territory and the powers of government delegated to the Company by the rulers of those territories in whom the sovereignty remains vested. It differs also from previous Charters, in that it prohibits instead of granting a general monopoly of trade.

The main objection which has been urged against the Charter is, that the undertaking which it recognises and supports may lead to attempts at conquest such as were incident to the progress of the East India Company, and consequently to hostilities with the natives, and to all the troubles recorded in the early history of our Settlements in New Zealand. The answer to that objection is, that the country which the Company have undertaken to administer has been for generations under the Governments of the Sultans of Sulu and Brunei, with whom Great Britain has had Treaties of Peace and Commerce; and that, far from any disorders arising out of the occupation of the Company under the Concessions voluntarily granted by the Sultans, the advent of the Company has been welcomed everywhere by the inhabitants. The experience of three years shews that the peaceful and intelligent development of the great natural resources of the country is steadily increasing, and there has never been on the part of the Company any suggestion of raising a force other than a police force; moreover, the powers of control reserved to the Crown in the Company's Charter are sufficient to prevent any attempt to govern and develop the country otherwise than by peaceful means.

Exception has also been taken in some quarters to the provision in Clause VII of the Charter, that "domestic slavery" is only to be discouraged and by degrees abolished; but it is manifest that the Company cannot abolish domestic slavery at once without creating the hostility and disorders which the opponents of the Charter venture to predict.

We failed to obtain such a measure from the Porte or the Khedive in our Slave Trade Treaties with Turkey and Egypt.

The Colonial Office were called upon to deal with the same question in the Gold Coast Protectorate, and Clause VII of the Charter resumes in a few words the policy adopted by Her Majesty's Government in those territories. (See Papers presented to Parliament on the Queen's jurisdiction on the Gold Coast and the Abolition of Slavery within the Protectorate, 6th February, 1875.)

It is objected also that the Charter recognises the power given to the Company by the Sultans to grant monopolies of opium. On this point I would observe that it is only by a Government monopoly that the abuse of opium can be restrained, unless its importation can be absolutely prohibited; and such prohibition could not be suddenly imposed on the natives of North Borneo by the Company without rousing among them the strongest opposition and resentment. It is for the above reasons, as well as for revenue purposes, that the monopoly of prepared opium is reserved to the Government in Hong Kong and Singapore and in the French and Dutch Settlements in the East.

When the Charter is examined in its true light, when the character and objects of the undertaking are correctly appreciated, and the surrounding circumstances are explained, I apprehend that most of the arguments raised against it must fall to the ground. But even admitting that some risks and responsibilities may flow from the undertaking, these are only problematical, and can hardly be weighed against the immediate and tangible advantages which Her Majesty's Government have secured to this country by the grant of the Charter.

Apart from the general merits of the undertaking, which promises to open up new and important fields to British trade and enterprise, the grant of this Charter is based on grounds of political expediency. It is a measure of precaution against the absorption into the exclusive commercial systems of Spain and Holland of territories to which neither the Dutch Treaty of 1824 nor the Protocol of Madrid apply, and also against the occupation by a foreign Power of a country lying in the fair-way of the immense maritime trade between China, the United Kingdom, and Australia, and the possession of which by an enemy, in time of war, would be fraught with grave peril to our shipping, and would necessitate the employment of a great naval force for its protection. These dangers will be averted, and the political, strategical, and commercial advantages of North Borneo to Great Britain will be practically obtained by the grant of the Charter to the Company, without entailing on this country the burden of annexation or the responsibilities of a British Protectorate.

JULIAN PAUNCEFOTE.

*Foreign Office,*
*January 1882.*

## TRANSLATION

**Despatch from His Majesty's Plenipotentiary Minister in London to the Minister of State dated 22 March 1882.**

...

**Your Excellency: I have the honour to inform Your Excellency, that I have had confirmation from reliable sources of the views I put to Your Excellency based on a simple inspection of the geographical map, regarding the limits attributed to Borneo on the one hand and to the Sulu Archipelago on the other, which have been the subject of recent negotiations.**

**According to these sources of information, the British Government's proposal, as communicated to the Cabinet in Berlin, is that the extent of the Sulu Archipelago is defined by art. 1° of the 1836 Treaty between Spain and the Sultan of Sulu, which includes the Balabas and Cagayan (Joló) islands, just as I had the opportunity to inform Your Excellency in my despatch of 25 February of this year.**

**The part relating to Borneo, which according to my reliable sources has been defined in the proposal sent to Berlin, includes the mainland that is subject to the dominion of the Sultan of Sulu, the adjacent islands of Balambangam, Banguey, Malawally and all islands and islets within three maritime leagues of the coast.**

...

MARQUES DE CASA-LAIGLESIA

## N.° 51.

## EL MINISTRO PLENIPOTENCIARIO DE S. M. EN LÓNDRES AL MINISTRO DE ESTADO.

Lóndres 22 de Marzo de 1882.

Excmo Señor:

Muy Señor mio: Tengo la honra de poner en conocimiento de V. E., que informes de origen fidedigno confirman las indicaciones que le tengo hechas, fundado en la simple inspeccion de la carta geográfica acerca de los límites aquí atribuidos á la parte de Borneo por un lado, y el Archipiélago de Joló por otro, objeto de las recientes negociaciones.

Segun dichos informes, la proposicion del Gobierno Británico, tal como ha sido dirigida al Gabinete de Berlin, considera el Archipiélago de Joló, segun tuve ocasion de decirlo á V. E. en mi despacho de 25 de Febrero último, tal como lo define el art. 1.° del Tratado de 1836 entre España y el Sultan de Joló, comprendiendo en él las islas de Balabac y Cagayan (Joló).

La parte correspondiente á Borneo, que segun dichos informes se ha designado en la proposicion dirigida á Berlin, abraza la tierra firme tributaria del Sultan de Joló, las islas adyacentes de Balambangam, Banguey, Malawally y todas las islas é islotes comprendidos dentro de tres leguas marítimas de la costa.

Dios, etc. Marqués de Casa-Laiglesia.

## Annex 26

# DESPATCH FROM THE MINISTER OF STATE TO HIS MAJESTY'S PLENIPOTENTIARY MINISTER IN LONDON DATED 31 MARCH 1882 (ENGLISH TRANSLATION AND SPANISH VERSION)

## TRANSLATION

**Despatch from the Minister of State to His Majesty's Plenipotentiary Minister in London dated 31 March 1882.**

...

**Your Excellency:**

**I received today Your Excellency's despatch of 22 of this month, in which you confirm your earlier views, with reference to the proposal presented to the German Government by Her Britannic Majesty's Government, defining the territorial delimitation and maritime jurisdiction which will have to be recognised respectively, in the forthcoming agreement with His Majesty's Government, regarding the Sulu Archipelago and the north-eastern part of Borneo, which makes up the territory of the Company.**

**Having examined these proposals, two issues call for attention, which if my suspicions are confirmed, would completely alter the terms of the negotiations.**

**The first issue regards the identification of the islands and islets which are to be considered dependents of the island of Borneo; this point can no doubt be resolved without it causing any problems to the negotiations; the issue does however require careful examination, so that the names of each feature can be recorded in the Act, as Your Excellency suggested during the meeting with Lord Granville, who accepted this proposal.**

**The second issue is the proposed extension of Borneo's jurisdiction up to an area of three leagues, which, were this to be confirmed, would completely alter the terms of the negotiations that Your Excellency was authorised to carry out by His Majesty's Government, and therefore no definitive solution to this question can be within Your Excellency's remit.**

**This last point is of great significance, because this area does not correspond to the jurisdictional limits which have up to now been accepted by other Nations, and the innovation would put our cruisers in a difficult position as regards policing those seas which are so important for us to patrol.**

...

## N.° 52.

### EL MINISTRO DE ESTADO

### AL MINISTRO PLENIPOTENCIARIO DE S. M. EN LÓNDRES.

Madrid 31 de Marzo de 1882.

Excmo Señor:

Recibo en el dia de hoy el despacho de V. E., de 22 del corriente, en que confirma sus anteriores indicaciones, relativas á la proposicion presentada al Gobierno de Alemania por el de S. M. Británica, designando la demarcacion territorial y la jurisdiccion marítima que respectivamente hayan de reconocerse, en el acuerdo que ha de celebrarse con el Gobierno de S. M., al Archipiélago de Joló y á la parte del Nordeste de Borneo, que ha de constituir el territorio de la Compañía.

Examinando estas proposiciones, llaman desde luégo la atencion dos puntos que, en el caso de confirmarse, alterarian por completo los términos de la negociacion.

Es el primero, la designacion de las islas ó islotes que deben considerarse como dependientes de la isla de Borneo; punto que podrá, sin duda, ser resuelto sin servir de obstáculo á la negociacion; pero que necesita ser examinado con detenimiento, consignándose despues en el Acta los nombres de cada una de ellas, como indicó V. E. en su conferencia con Lord Granville, y aceptó ese Sr. Ministro.

El segundo es, la pretension de hacer extensiva la jurisdiccion de Borneo hasta una zona de tres leguas, que, en el caso de confirmarse, alterarian por completo los términos de la negociacion para que fué V. E. autorizado por el Gobierno de S. M., y sobre cuya resolucion definitiva no puede, por lo tanto, considerar que ha adquirido compromiso alguno.

Este último punto es de la mayor importancia, porque esta zona no corresponde á los límites jurisdiccionales hasta ahora aceptados por otras Naciones, y la innovacion colocaria á nuestros cruceros en una situacion ineficáz para ejercer la policía de aquellos mares que tanto nos interesa vigilar.

Por otra parte, esta misma innovacion seria de tanta monta, cuando por regla general es de tres millas marinas la jurisdiccion marítima admitida, que bastaria por sí sola para abrir discusion sobre este punto, si no autorizára á ello la circunstancia de que nada haya dicho sobre él hasta ahora ese Sr. Ministro de Negocios Extranjeros.

Convendrá, pues, que V. E. prevenga el ánimo de Lord Granville para que no dé por supuestas ó acordadas unas cláusulas sobre las cuales V. E. nada ha dicho ni convenido.

De Real órden, etc.

Dios, etc. El Marqués de la Vega de Armijo.

## Annex 27

## DESPATCH FROM COUNT DE BYLANDT TO EARL GRANVILLE DATED 31 MAY 1882

No. 1.

*Count de Bylandt to Earl Granville.—(Received June 1.)*

M. le Comte, *Londres, le 31 Mai, 1882.*

DANS le courant du mois de Juillet de l'année dernière j'ai communiqué au Gouvernement du Roi une information reçue du Consul-Général des Pays-Bas à Singapore, d'après laquelle le navire de guerre Britannique "Medusa," [illegible] visite à notre établissement à Batoe Tinagat sur la côte nord-est de Bornéo, aurait constaté que la grande rivière près de ce point, et appelée par le Baron Verschuer la Sibuco, serait la Kallabatting, tandis que la véritable Sibuco serait située 15 ou 20 milles plus au sud.

Cette assertion a donné lieu à une nouvelle enquête aux Indes pour déterminer la frontière précise de notre territoire à la côte orientale de Bornéo.

Il n'a pas échappé à l'attention du Gouvernement du Roi, que le Gouvernement de Sa Majesté Britannique a formellement exprimé la divergence d'opinion au sujet de la frontière entre le territoire Néerlandais, et celui de la "British North Borneo Company" dans les cartes jointes aux "Parliamentary Papers, Spain and the Netherlands, No. 1 (1882)." D'abord il fut censé préférable d'attendre le résultat de la nouvelle enquête précitée, avant de présenter au Gouvernement Britannique des observations au sujet de ces cartes. Comme toutefois il est possible que cette enquête durera assez longtemps, il semble désirable dès à présent de faire remarquer au Gouvernement Britannique que son invocation de l'Arrêté Indien du 28 Février, 1846 (dont il fait encore mention dans la Carte No. 2, appartenant aux "Papers respecting the Claims of Holland") n'est pas correcte.

Cet arrêté ne donne nullement, comme on semble évidemment le supposer, la dernière fixation des frontières du territoire Néerlandais à la côte orientale de Bornéo. En effet, le "Journal Officiel Indien" de 1849, No. 40, donne déjà une description modifiée de ces frontières, dans laquelle la mention d'une frontière au 4° 20' de latitude nord est supprimée. Ensuite, l'Arrêté de 1846 a été officiellement rectifié dans les communications sur les possessions d'outre-mer de l'État, adressées à la Seconde Chambre par missive du Ministre des Colonies en date du 18 Juin, 1850, et publiées dans les annexes de la Session 1849-50, XXXVI, 2, pp. 498 et suivantes. À la page 498 il est dit: "Les dernières enquêtes ont appris que des Chefs Boeloengan sont établis sur les territoires riverains de quelques petites rivières jusqu'au 4° 20' de latitude nord." Finalement, le "Journal Officiel Indien" de 1877, No. 21, avant les Concessions accordées aux Sieurs Overbeck et Dent, a déjà établi que sous l'État vassal Boeloengan ressortaient les territoires de Tidong et les îles Tarakan, Nenoekan, et Sebittik, avec les petites îles adjacentes.

Au surplus, il suffit de rappeler que la description de l'État de Boeloengan se trouve mentionnée dans le Contrat de Vassalité conclu avec le Souverain de ce territoire, du 2 Juin, 1878; et que j'ai eu l'honneur de transmettre au Gouvernement de Sa Majesté Britannique par ma note du 17 Janvier, 1880.

En me permettant, d'ordre de mon Gouvernement, de fixer la bienveillante attention de votre Excellence sur les détails qui précèdent, je saisis, &c.

(Signé) C. DE BYLANDT.

# Correspondence respecting the Question of the Limits of the Netherlands Territory on the North-East Coast of Borneo: 1882-84.

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## No. 1.

*Count de Bylandt to Earl Granville.—(Received June 1.)*

M. le Comte, *Londres, le 31 Mai*, 1882.

DANS le courant du mois de Juillet de l'année dernière j'ai communiqué au Gouvernement du Roi une information reçue du Consul-Général des Pays-Bas à Singapore, d'après laquelle le navire de guerre Britannique "Modeste," [illegible] visita notre établissement à Batoe Tinagat, sur la côte nord-est de Bornéo, aurait constaté que la grande rivière près de ce point, et appelée par le Baron Verschuer le Sibuco, serait le Kallabeating, tandis que le véritable Sibuco serait situé 15 ou 20 milles plus au sud.

Cette assertion a donné lieu à une nouvelle enquête aux Indes pour déterminer la frontière précise de notre territoire à la côte orientale de Bornéo.

Il n'a pas échappé à l'attention du Gouvernement du Roi, que le Gouvernement de *Sa Majesté* Britannique a formellement exprimé la divergence d'opinion au sujet de la frontière entre le territoire Néerlandais et celui de la "British North Borneo Company" dans les cartes jointes aux "Parliamentary Papers, Spain and the Netherlands, No. 1 (1882)." D'abord il fut trouvé préférable d'attendre le résultat de la nouvelle enquête précitée, avant de présenter au Gouvernement Britannique des observations au sujet de ces cartes. Comme toutefois il est possible que cette enquête durera assez longtemps, il semble désirable dès à présent de faire remarquer au Gouvernement Britannique que son invocation de l'Arrêté Indien du 28 Février, 1846 (dont il fait encore mention dans la Carte No. 2, appartenant aux "Papers respecting the Claims of Holland") n'est pas correcte.

Cet arrêté ne donne nullement, comme on semble évidemment le supposer, la dernière fixation des frontières du territoire Néerlandais à la côte orientale de Bornéo. En effet, le "Journal Officiel Indien" de 1849, No. 40, donne déjà une description modifiée de ces frontières, dans laquelle la mention d'une frontière au 3° 20′ de latitude nord est supprimée. Ensuite, l'Arrêté de 1846 a été officiellement rectifié dans les communications sur les possessions d'outre-mer de l'État, adressées à la Seconde Chambre par missive du Ministre des Colonies en date du 18 Juin, 1850, et publiées dans les annexes de la Session 1849-50, XXXVI, 2, pp. 403 et suivantes. À la page 406 il est dit: "Les dernières enquêtes ont appris que des Chefs Boelongans sont établis sur les territoires riverains de quelques petites rivières jusqu'au 4° 20′ de latitude nord." Finalement, le "Journal Officiel Indien" de 1877, No. 31, avant les Concessions accordées aux Sieurs Overbeck et Dent, a déjà établi que sous l'État vassal Boelongan ressortaient les territoires de Tidong et les Iles Terrakan, Neuvekan, et Sebittik, avec les petites îles adjacentes.

Au surplus, il suffit de rappeler que la description de l'État de Boelongan se trouve mentionnée dans le Contrat de Vassalité conclu avec le Souverain de ce territoire, du 2 Juin, 1878; et que j'ai eu l'honneur de transmettre au Gouvernement de Sa Majesté Britannique par ma note du 17 Janvier, 1880.

En me permettant, d'ordre de mon Gouvernement, de fixer la bienveillante attention de votre Excellence sur les détails qui précèdent, je saisis, &c.

(Signé) C. DE BYLANDT.

Memorandum on the Dutch Frontier on the North-East Coast of Borneo.

## Annex 28

## *MEMORANDUM ON THE DUTCH FRONTIER ON THE NORTH-EAST COAST OF BORNEO*
## BY SIR E. HERTSLET DATED 20 JUNE 1882

[illegible] the 21st Article, that it was incorrect to quote the Indian Arrêté of the 28th February, 1846, as was done on the face of Map No. 2 annexed to the papers relating to Borneo and Sulu, recently laid before Parliament, as marking the latest boundary of the Dutch territory on the east coast of Borneo, since (Count de Bylandt states) a modified description of the Dutch frontiers was published in the "Journal Officiel Indien" of 1849, No. 40, in which the mention of the frontier at 3° 20' north latitude was suppressed; and that an announcement was made by the Dutch Colonial Minister in the Second Chamber on the 18th June, 1850, that the Article of 1846 had been rescinded.

Count de Bylandt, May 21, 1882.

"Borneo and Sulu No. 1 (1882)."

No. 40, Resolution No. 8, August 27, 1849.

To Sir J. Brooke, No. 3, June 30, 1849.

The Arrêté of the 28th February, 1846, referred to, was forwarded to this Office by Sir E. Disbrowe, Her Majesty's Minister at the Hague, in his despatch No. 55 of the 8th April, 1849.

Sir J. Brooke, No. 11, October 3, 1849.

Sir E. Disbrowe, No. 49, May 29, 1846.

Sir E. Disbrowe had, in May 1846, forwarded home an extract from a Decree of the Governor-General of Netherland India establishing a new Governor in Borneo, and fixing the limits of what Sir E. Disbrowe described as "those assumed possessions;" but in his despatch of the 8th April, 1849, he said that, from circumstances which had since come to his knowledge, and from hints that had been thrown out since he had officially communicated the Treaty between the British Government and the Sultan of Borneo of 1847, he was induced to believe that the limits which the Governor-General of Netherland India included in this new

"The claim on Gunong Taboor and Bulungan has recently been set up, as Sir E. Belcher visited these places in the year 1845 and formed Treaties with the Sultans of these two countries, after satisfying himself that they were independent Sovereigns;" adding:—"I am not acquainted whether the Treaties formed by this officer have been ratified, but they are of so simple a nature that it might still be deemed advisable to use them in order to rescue such countries from the sway of Holland."

## *Memorandum on the Dutch Frontier on the North-east Coast of Borneo.*

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Count de Bylandt; May 31, 1882.

COUNT DE BYLANDT says, in his note of the 31st ultimo, that it was incorrect to quote the Indian Arrêté of the 28th February, 1846, as was done on the face of Map No. 2 annexed to the papers relating to Borneo and Sulu, recently laid before Parliament, as marking the latest boundary of the Dutch territory on the east coast of Borneo, since (Count de Bylandt states) a modified description of the Dutch frontiers was published in the "Journal Officiel Indien" of 1849, No. 40, in which the mention of the frontier at 3° 20′ north latitude was suppressed; and that an announcement was made by the Dutch Colonial Minister to the Second Chamber on the 18th June, 1850, that the Arrêté of 1846 had been rectified.

"Netherlands No. 1 (1882)."

No. 40, Resolution No. 8; August 27, 1849.

The Arrêté of the 28th February, 1846, referred to, was forwarded to this Office by Sir E. Disbrowe, Her Majesty's Minister at the Hague, in his despatch No. 65 of the 9th April, 1849.

Sir E. Disbrowe, No. 45; May 20, 1846.

Sir E. Disbrowe had, in May 1846, forwarded home an extract from a Decree of the Governor-General of Netherland India establishing a new Governor in Borneo, and fixing the limits of what Sir E. Disbrowe described as "those assumed possessions;" but in his despatch of the 9th April, 1849, he said that, from circumstances which had since come to his knowledge, and from hints that had been thrown out since he had officially communicated the Treaty between the British Government and the Sultan of Borneo of 1847, he was induced to believe that the limits which the Governor-General of Netherland India included in this new

Government contained a very extensive part of the interior of the island, and probably portions which were included within the frontier of Borneo Proper; and he therefore sent home a copy of the "Staats Courant," or Official Gazette (together with a translation by a sworn translator), containing the Arrêté of the 28th February, 1846, in full, which claimed as the Dutch boundary territory situated as far as "the Kampong Atas, forming the boundary of the State Boelongan, belonging to Berou, with the Tidoeng countries, and situated about 3° 20′ north latitude;" but no further.

This is the Arrêté which was alluded to in the Map laid before Parliament, and to the notice of which Count de Bylandt now takes exception.

But it may be mentioned that, as soon as Sir E. Disbrowe's despatch of the 9th April, 1849, reached this Office, a copy of it, together with the Arrêté of 1846, "fixing the limits of the possessions to which the Netherland Government laid claim in Borneo," was sent to Sir James Brooke, with instructions to furnish Lord Palmerston with a Report as to the limits therein set forth.

To Sir J. Brooke, No. 3; June 20, 1849.

In his Report of the 3rd October, 1849, Sir J. Brooke said:—

Sir J. Brooke, No. 11; October 3, 1849.

"The geography of Borneo is so imperfect, and the boundary-lines of petty States so irregular, so vague, and of so little consequence to the native Rulers, that it can scarcely be maintained by the Netherland Government, as stated in the extract from the Register of Resolutions, 'that the general knowledge obtained of the geographical and political affairs of Borneo afford an opportunity of fixing the circumscription of a territorial division of the island.'"

And, with reference to the boundary in 3° 20′, he said:—

"The claim on Gunong Taboo and Bulungan has recently been set up, as Sir E. Belcher visited these places in the year 1845, and formed Treaties with the Sultans of those two countries, after convincing himself that they were independent Sovereigns;" adding:—"I am not acquainted whether the Treaties formed by this officer have been ratified, but they are of so simple a nature that it might still be deemed advisable to use them, in order to save these rich countries from the sway of Holland."

He also said :—"A second ground may be taken for this purpose, as, should the British Treaty with the Sultan of Sulu be ratified, his claim on Gunong Tabou and Bulungan, as tributary States, may be maintained, and the claim of Holland repudiated on that ground."

No objection was, however, offered to the extension of the Dutch territory in Borneo on the north-east coast, as far as 3° 20′; but nothing beyond that, to the north, has ever been recognized by this country as belonging to the Dutch.

Count de Bylandt says, in his present communication, that this boundary was altered in August 1849, by a "Resolution," published in the "Journal Officiel Indien," in which the frontier at 3° 20′ north latitude was suppressed.

A copy of that document has been procured from the British Museum, as it was not communicated to this Office in any official despatch, either from the Hague or from Borneo; and it will be seen from a perusal of it that it was not stated therein that the Dutch frontier was advanced beyond 3° 20′, although it spoke in vague terms of "the entire river district of Berou;" and so far from Her Majesty's Government having any reason to suppose that any claim was at that date set up to an extension of territory beyond 3° 20′, Sir E. Disbrowe, in that same month, August 1849, forwarded to Lord Palmerston a Map of a part of the Island of Borneo, published under the direction of Lieutenant Melville Carnebec, of the Royal Netherland Navy, "showing the limits which the Netherland Government claimed in that island, in virtue of the Proclamation of the Governor-General of Netherland India, M. de Rochussen;" and Sir E. Disbrowe assured his Lordship that, although it was not an original boundary map, and not perfectly official, it indicated correctly the Netherland pretensions.

E. Disbrowe, No. 189; August 28, 1849.

A copy of that Map is in the archives of this Office, and the Atas River, in latitude 3° 20′, is marked as the limit of the Dutch possessions.

The Map bears the following title :—

Map No. 16, India and East Indies.

"Carte de l'Ile de Bornéo, par le Baron P. Melville de Carnabec, 1848, gravée par D. Heyse, à La Haye."

But Count de Bylandt further states that it is recorded in the P[illegible]dings of the Second Chamber of the Netherlands of 1850 that the Minister of Finance then announced that "les dernières enquêtes ont appris que des Chefs Boelongans sont établis sur les territoires riverains de quelques petites rivières jusqu'au 4° 20' de latitude nord;" but he does not say that any *Arrêté* was issued by the Dutch authorities in the East Indies altering the boundary as proclaimed by the *Arrêté* of 1846, and in proof that no such *Arrêté* was issued, it may be stated that eleven years after the date when the alteration in the boundary is said to have been made (1849), that is to say, in November 1857, the British Consul at Batavia forwarded to Lord Palmerston a copy of the *latest* Map of the Netherland possessions in India, published at Breda in that year (1857), and which he pronounced to be "extremely correct in its details."

Consul Fraser, No. 24; November 20, 1857.

The following is a translation of the title of this Map:—

"General Land and Sea Map of the Dutch Ultramarine Possessions, with the Kingdom of the Netherlands in Europe. By A. J. Bogaerts. Dedicated to Major-General J. W. Walther, Governor of the Royal Naval and Military Academy.—Breda, 1857."

"Algemeene Land- en Zee-Kaart van de Nederlandsche Overzeesche Bezittingen, met het Koningrijk der Nederlanden in Europa. Opgedragen aan den Heer Generaal Majoor J. W. Walther, Gouverneur de Koninklyke Akademie voor de Zee- en Landmagt, &c. A. J. Bogaerts. Breda, 1857."

This Map has been considered to be so valuable, as showing what the Dutch really claimed as their boundary in 1857, that that portion of it which comprises the north-east coast of Borneo has been lithographed, and a copy of it is sent herewith.

Map.

It will be seen that the boundary line is marked as extending as far as the Atas River, in 3° 20', and no further; the territory above that line being marked as belonging to Sulu.

In conclusion, Count de Bylandt says that it was officially announced in the "Journal Officiel Indien" of 1877, No. 31, that the territories of Tidong, with the Islands of Terrakan, Nanoekan, and Sebittik, and the small islands adjacent thereto, were included in the vassal State of Boelongan, and that the description of that vassal State was given in the "Contrat de Vassalité" concluded with the Sovereign of that State on the 2nd June, 1878; and he then points out that the announcement made in the "Journal Officiel Indien" of 1877 was *before* the Dent and Overbeck Concessions; but, as those Concessions were signed on the 29th

No. 31, "Staatsblad der Nederlandsch Indie" (voor 1877): Decree, February 2, 1877.

December, 1877, and 22nd January, 1878, the "Contrat de Vassalité" of the 2nd June, 1878, was not concluded until *after* these Concessions were granted. No document has been produced to show that the territory belonging to the Chief of Boelangan was ceded to the Dutch before the 2nd February, 1878, and Her Majesty's Government were not aware of the existence of any such "Contrat" until the 17th January, *1880*, when, as Count de Bylandt states, he first communicated a copy of it officially to Lord Salisbury.

The following is a description of the boundaries of the Kingdom of Boeloengan, and statement of the islands belonging to it, alluded to in the contract:—

"The boundaries of the Kingdom of Boeloengan are:—

"*Next Goenoeng Taboer*: from the sea-strand; inland, the River Karangtiegan, from its mouth to its source; then the Batoe Beoekkier and the Mountain Palpakh;

"*Next the Solokh possessions*: on sea the angle called Batoe Tinagat, and then the River Tawau.

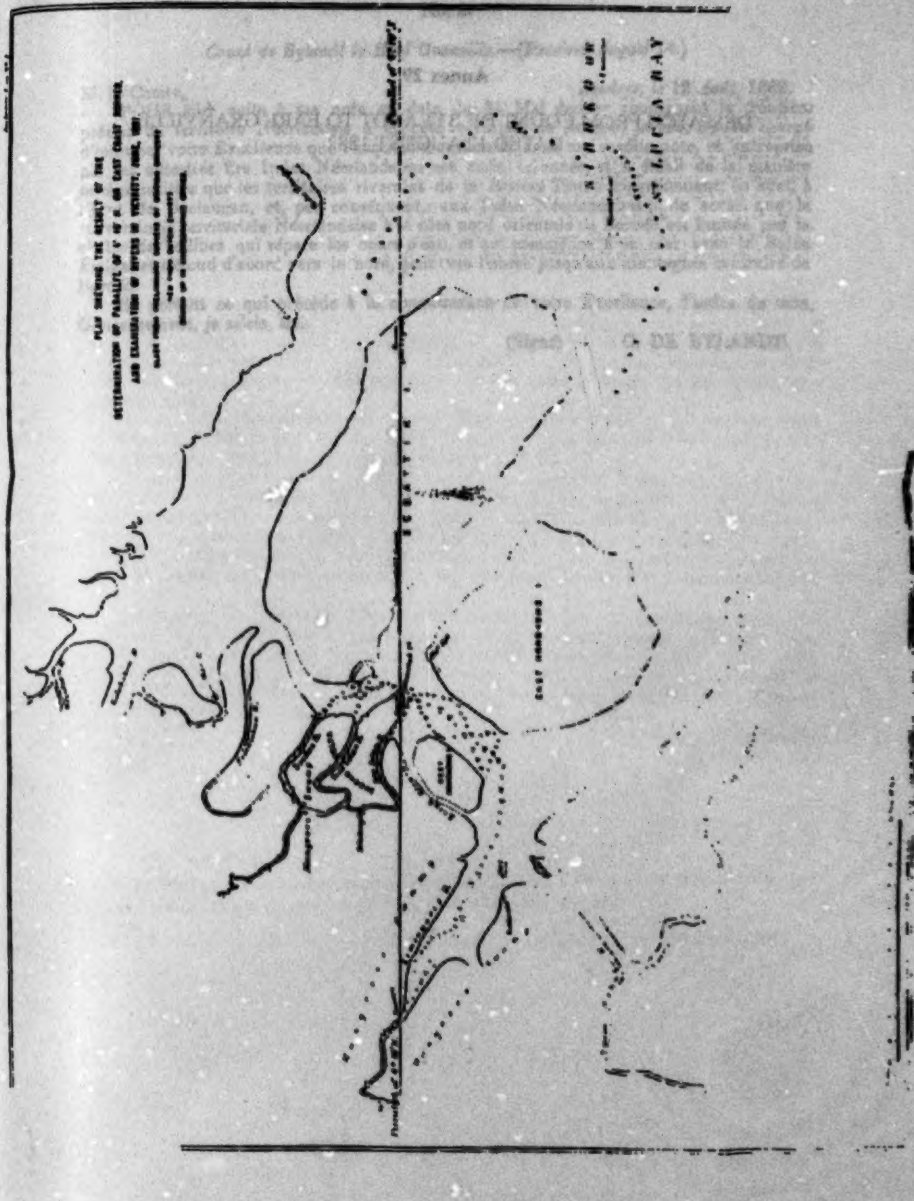
"The following islands belong to Boeloengan, viz., Terakkan, Nanoekan, and Sebittikh, with the islets belonging thereto."

It will therefore be seen, from what has been stated above, that Her Majesty's Government were perfectly justified in stating on the face of the Map which was laid before Parliament with the Borneo and Sulu Papers, that they only recognized as belonging to the Dutch, territory on the north-east coast of Borneo as far as 3° 20′; and that, although the Dutch claimed that their frontier extended as far as 4° 20′, that boundary had not been recognized by Her Majesty's Government.

In fact, to have recognized the Dutch right to the latter boundary would have been to deny the right of the Sultan of Sulu to cede territory as far as the Sibuco River to Messrs. Dent and Overbeck, and thereby to have pronounced an opinion, if not a decision, on the disputed boundary question, which will have to be settled hereafter between the Dutch Government and the British North Borneo Company.

E. HERTSLET.

*Foreign Office,*
*June* 20, 1882.



PLAN SHEWING THE RESULT OF THE DETERMINATION OF PARALLEL OF 4° 10' N. ON EAST COAST BORNEO, AND EXAMINATION OF RIVERS IN VICINITY, JUNE, 1891.

Parallel of 4° 10' N
SEBATTIK I.
EAST NANUKAN I.
Mangrove Swamp
SIBUKO BAY
ST LUCIA BAY

## Annex 29

# DESPATCH FROM COUNT DE BYLANDT TO EARL GRANVILLE DATED 12 AUGUST 1882

## No. 8.

*Count de Bylandt to Earl Granville.—(Received August 14.)*

M. le Comte,

*Londres, le 12 Août, 1882.*

POUR faire suite à ma note en date du 31 Mai dernier concernant la frontière précise du territoire Néerlandais à la côte orientale de Bornéo, je suis chargé d'informer votre Excellence que l'enquête mentionnée dans ma susdite note, et entreprise par les autorités des Indes Néerlandaises est enfin terminée, et a établi de la manière la plus positive que les territoires riverains de la Rivière Tawao appartiennent, en effet, à l'État de Boelangan, et, par conséquent, aux Indes Néerlandaises; de sorte que la souveraineté territoriale Néerlandaise à la côte nord orientale de Bornéo est limitée par la chaine de collines qui sépare les cours d'eau, et qui commence à la mer avec le Batoe Finigal et s'étend d'abord vers le nord, puis vers l'ouest jusqu'aux montagnes centrales de Bornéo.

En portant ce qui précède à la connaissance de votre Excellence, d'ordre de mon Gouvernement, je saisis, &c.

(Signé) C. DE BYLANDT.

## Annex 30

# DESPATCH FROM EARL GRANVILLE TO COUNT DE BYLANDT DATED 31 AUGUST 1882

## No. 4.

### *Earl Granville to Count de Bylandt.*

M. le Ministre, *Foreign Office, August 31, 1880.*

I HAVE the honour to acknowledge the receipt of your notes of the 31st May last and the 12th instant upon the subject of the definition of the limits of the Netherland territory on the north-east coast of Borneo.

In the former note it was stated that Her Majesty's Government were not justified in appealing to the "Arrêté" of the 28th February, 1846, by which the frontier was fixed at about 3° 20′ north latitude, as the terms of that Decree had been subsequently modified. The occasions on which the modification was made were specified as being, firstly, an announcement published in the "Journal Officiel, Indien," in 1849; secondly, a communication made to the Chamber by the Netherland Minister for the Colonies in 1850.

Upon this it seems to be sufficient for me to remark that Her Majesty's Government consider themselves justified in relying upon the official "Arrêté" of 1846, which was communicated to them through the regular channel, and that they could not be expected to rely in preference upon the announcement of 1849, of which they first heard when it was mentioned in your note, or upon a communication made to the Chamber, but which was not followed, so far as they are aware, by the issue of a new Arrêté altering the preceding one.

I may add, however, that upon the receipt of your note a copy of the announcement of 1849 was procured, and that no statement is found in it that the Netherland frontier was advanced beyond the previously-named limit of 3° 20′.

It was mentioned in the former of your notes that the Government of Netherland India were investigating the question of the frontier, and in the later note it is stated that the result of the investigation has been to show that the State of Boelangan is bounded by the watershed beginning on the sea at Batoe Tinagat, and stretching first northwards, then eastwards, to the central mountains of Borneo. It is claimed that, as the State of Boelangan has been incorporated, the above has become the present Netherland frontier.

As regards this contention, I have to observe that it rests principally upon dates, and that there appears to be conclusions against it. The Concessions made to Messrs. Dent and Overbeck were dated on the 29th December, 1877, and 22nd January, 1878. The date of the "Contrat de Vassalité" of Boelangan, communicated by you on the 17th January, 1880, is the 2nd June, 1878, and, consequently, being posterior to the Concessions, it cannot invalidate them.

You will permit me to say, therefore, M. le Ministre, that a careful and friendly

examination of your arguments has convinced Her Majesty's Government that they fail to support a claim for the recognition of a frontier extending beyond 3° 20′.

I have, &c.

(Signed) GRANVILLE.

## Annex 31

# DESPATCH FROM COUNT DE BYLANDT TO EARL GRANVILLE DATED 1 DECEMBER 1882

## No. 5.

### *Count de Bylandt to Earl Granville.—(Received December 1.)*

M. le Comte, *Londres, le 1er Décembre,* 1882.

JE me suis empressé de communiquer à mon Gouvernement la note que votre Excellence m'a fait l'honneur de m'adresser, en date du 31 Août dernier, au sujet de la délimitation du territoire Néerlandais sur la côte orientale de Bornéo.

En réponse, je me trouve chargé de présenter à votre Excellence les observations qui suivent.

Tout d'abord le Gouvernement du Roi est fort loin de vouloir contester que celui de Sa Majesté Britannique ne puisse, dans son appréciation de cette affaire, se laisser guider par des pièces officielles émanées soit de lui, soit du Gouvernement des Indes Néerlandaises. Mais dès lors il n'est que juste de considérer dans leur ensemble toutes les pièces qui se rapportent à la matière, et puisque votre Excellence tient exclusivement compte de l'Arrêté du Gouverneur-Général du 28 Février, 1846, qui, me dit-elle, est parvenu à son Gouvernement par la voie régulière, je dois constater [illegible] pas plus que les autres, n'a jamais été communiqué par mon Gouvernement à celui de la Grande-Bretagne.

Même en plaçant la discussion sur le terrain exclusif de l'Arrêté de 1846, les droits des Pays-Bas demeurent intacts, pourvu que l'on consulte cette pièce en entier et ne s'arrête pas à un chiffre qui s'y trouve inscrit. Dans son préambule elle déclare expressément que le but de la division territoriale de Bornéo était d'écarter toute incertitude au sujet de la juridiction à laquelle ses habitants seraient soumis, sans préjudice aucun pour les droits des Pays-Bas sur des contrées ou des districts en dehors de ceux énumérés dans le corps de l'Arrêté. À l'époque où cet Arrêté fut pris, la connaissance des lieux n'était encore que fort imparfaite. Ainsi, en déclarant que la frontière au nord était formée par le Kampong Atas, c'est simplement à titre d'indication complémentaire et toute approximative qu'il est ajouté dans l'Arrêté que cet endroit est situé à environ 3° 20′ de longitude septentrionale.

Cependant, dès 1849, cette indication était reconnue comme erronée; par suite dans l'Arrêté du Gouvernement des Indes du 27 Août, 1849, indiquant d'ailleurs le Soengei ou Kampong Atas, le même point de l'Arrêté antérieur, comme formant la frontière, la mention de la longitude a *été supprimée.* Ce n'est pas, il est vrai, à cette occasion qu'elle a *été remplacée* par la mention du 4° 20′ de longitude septentrionale. C'est ce qui a été fait dans la communication que le Gouvernement Néerlandais fit à ce sujet en 1850 aux États-Généraux.

Enfin, le Décret du Gouvernement des Indes du 2 *Février,* 1877 (Bulletin des Lois des Indes Néerlandaises, No. 31) que j'ai également eu l'honneur de signaler à l'attention de votre Excellence par ma note du 31 Mai, n'a pas été mentionné dans sa note. Cet Arrêté constate que l'État vassal de Boeloengan, avec les pays de Tidoeng qui en relèvent, ainsi que les Iles Terrakan, Nanoekan, et Sebittikh appartiennent au territoire Néerlandais. Ce Décret était promulgué avant les Concessions accordées par Brunei et Soeloe à MM. Dent et Von Overbeck. Le principe invoqué par votre Excellence, qu'en pareille matière ce sont les dates qui décident, est donc entièrement en notre faveur. Cela est d'autant plus vrai qu'il ne s'agissait pas pour les Pays-Bas d'acquérir de nouveaux droits territoriaux, mais de définir ceux qui existaient déjà. Il en est de même du contrat du 22 Janvier, 1878, avec Boeloengan, qui a été communiqué officiellement au Gouvernement de la Grande-Bretagne, et qui ne tend qu'à remplacer par de nouvelles des stipulations contractuelles ne répondant plus aux besoins présents, ainsi que souvent—le Gouvernement Britannique le sait par expérience—le besoin s'en fait sentir. Aussi, ce contrat n'a-t-il aucun rapport avec la Concession Dent-Von Overbeck, dont, d'ailleurs, ni le Gouvernement du Roi, ni le Gouvernement des Indes n'avaient connaissance quand l'autorisation fut donnée de signer le contrat avec Boeloengan, ni même quand la signature en eut lieu.

J'ose me flatter, M. le Comte, d'avoir établi par les arguments que je viens d'exposer, les droits incontestables de mon Gouvernement dans cette affaire. Elle [illegible] un autre point de vue qui permet de supposer qu'elle peut être réduite à un [illegible]

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tendu. Quelle est la rivière que MM. Dent et Von Overbeck ont eue en vue en prenant le "Sibochoe" comme frontière des Concessions? Tout porte à croire qu'elle n'est aucunement celle qui actuellement se désigne sous ce nom.

La notice que j'ai l'honneur de remettre ci-près à votre Excellence contient un ensemble de faits qui permettent de considérer comme fort probable que la rivière désignée dans les Concessions sous le nom de "Sibochoe" est située à l'est de Batoe Tinagat et par conséquent en dehors du territoire Néerlandais. En ce cas toute cette controverse tomberait d'elle-même; elle n'aurait en réalité jamais existé.

Mais en tout état de cause l'incertitude qui existe également chez le Gouvernement Britannique au sujet de l'exacte situation de cette rivière, est trop grande pour que le fait qu'elle est mentionnée comme limite des Concessions, puisse infirmer les données positives à l'égard de la frontière Néerlandaise telle qu'en dernier lieu le contrat avec Boelongan la définit.

Aussi le Gouvernement du Roi, mon auguste Souverain, n'a-t-il pu voir qu'avec regret que celui de Sa Majesté Britannique semble attacher à des pièces telles que les Concessions Dent-Von Overbeck plus de valeur qu'aux déclarations positives faites depuis longtemps et à diverses reprises, par une Puissance amie au sujet des frontières de son propre territoire.

De son côté le Gouvernement Néerlandais se voit dans l'impossibilité de renoncer au territoire ressortant depuis nombre d'années de sa souveraineté. Pour préserver de toute atteinte, comme elle y est obligée, les droits des Princes indigènes, ses vassaux, la Néerlande a un intérêt très réel à la conservation de Batoe-Tinagat comme frontière. Par contre, quel intérêt la "British North Borneo Company" peut-elle avoir à la bande de terrain qui est l'objet de la controverse et quel détriment éprouverait-elle à ne pas l'acquérir? Serait-ce pour prévenir des entraves qui pourraient être apportées au commerce et à la navigation sur l'Ile de Bornéo?

Mais rien n'est plus loin des intentions du Gouvernement du Roi que d'opposer à ces intérêts la moindre difficulté. Tout récemment j'ai eu moi-même occasion d'en donner au Foreign Office l'assurance formelle, que mon Gouvernement a entièrement approuvé et me charge de réitérer expressément à votre Excellence dans l'affaire qui nous occupe actuellement.

En m'acquittant par la présente des instructions que je viens de recevoir, j'ai, &c.

(Signé) C. DE BYLANDT.

## Annex 32

# DESPATCH FROM COUNT DE BYLANDT TO FOREIGN OFFICE DATED 25 MARCH 1883

## No. 11.

*Count de Bylandt to Earl Granville.—(Received March 26.)*

M. le Comte, *Londres, le 25 Mars,* 1883.

J'AI l'honneur de transmettre ci-joint la copie d'une dépêche que je viens de recevoir du Gouvernement du Roi concernant la question des limites de la souveraineté Néerlandaise sur la côte nord orientale de Bornéo.

Je me réfère au contenu de cette communication et dans le but d'y ajouter quelques explications verbales que je suis chargé de soumettre à votre Excellence, je me propose de me présenter au Ministère des Affaires Étrangères Mercredi prochain entre 3 et 4 heures après-midi dans l'espoir d'être reçu par votre Excellence.

J'ai, &c.
(Signé) C. DE BYLANDT.

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## Inclosure in No. 11.

*M. Rochussen to Count Bylandt.*

M. le Comte, *La Haye, le 23 Mars,* 1883.

PAR son office du 13 Janvier dernier, ci-joint en copie, M. le Ministre de la Grande-Bretagne me proposa, au nom de son Gouvernement, d'instituer une enquête sur les lieux au sujet de l'exacte délimitation du territoire Néerlandais sur la côte nord-est de l'île de Bornéo et de déférer la question à une sentence arbitrale, si de cette manière encore une solution satisfaisante ne se laissait point établir.

La réponse du Gouvernement du Roi, notre auguste Souverain, à cette proposition, était arrêtée en principe et allait vous être incessamment expédiée, quand j'eus l'honneur de recevoir de Mr. Stuart un deuxième office sur cette question, en date du 14 courant.

Dans cette pièce, que vous trouverez également ci-jointe en copie, Mr. Stuart me dit que sa première proposition avait été faite "en vue de l'urgente nécessité d'arriver à une solution de ce différend." Cependant dans la note du 13 Janvier elle-même il n'est nulle part question de pareille urgence. Je dois constater en outre que cette affaire n'a été l'objet d'aucun entretien entre Mr. Stuart et moi, en sorte que verbalement non plus une réponse à bref délai ne m'a jamais été réclamée. Enfin, la nature même de la proposition excluait toute idée d'urgence. En admettant même que nous eussions mis le plus grand empressement à l'accepter, ce n'est certes pas à une prompte solution que l'on serait arrivé de cette manière. Un examen sur les lieux avec recours à une sentence arbitrale dans le cas prévu d'avance que le résultat de cet examen ne serait pas accepté comme satisfaisant par la "British North Borneo Company," n'était assurément pas le moyen d'obvier aux inconvénients que croient pouvoir signaler, dans l'état actuel des choses, les dernières lettres de la Compagnie citées maintenant par M. le Ministre de la Grande-Bretagne.

Le Gouvernement du Roi a cru devoir apporter à l'examen d'une proposition pareille faite par le Gouvernement ami et allié de Sa Majesté Britannique la plus scrupuleuse attention. Il avait l'incontestable droit de consulter sur la décision à prendre par le Gouvernement des Indes Néerlandaises. En ce cas, la réponse eût dû se faire attendre au moins pendant trois mois, et selon mes dispositions c'est Samedi, le 17 courant, qu'elle vous eût été adressée.

Je devais, M. le Comte, vous y inviter à rappeler au Principal Secrétaire d'État pour les Affaires Étrangères que, d'après une carte communiquée au Parlement Anglais, la cession territoriale faite à MM. Dent et von Overbeck empiétait sur le territoire Néerlandais ; que nous nous étions empressés de signaler cette erreur à l'attention du Cabinet de Londres, et de lui donner à cet égard tous les renseignements nécessaires ; que ces renseignements avaient été complétés quand des doutes avaient paru subsister dans l'esprit de Lord Granville. Je me serais déclaré tout disposé à fournir encore de nouveaux explications, mais j'aurais dû ajouter que cela n'eût point été possible tant que les arguments détaillés et concluants exposés dans votre note du 1er Décembre, 1881, n'avaient été réfutés sur aucun point, tant que l'on ne nous a pas même indiqué quelle est la rivière désignée dans les Concessions Dent et von Overbeck sous le nom de Sibuco.

Aussi, M. le Comte, ne s'agit-il pas ici d'un différend territorial entre deux États, mais la Néerlande se voit placée vis-à-vis d'une Compagnie particulière de commerce, elle-même si peu au fait des droits territoriaux dans le nord-est de Bornéo qu'elle s'est fait céder le même territoire à la fois par deux Princes indigènes [illegible], et sans autre titre que ces cessions, elle croit pouvoir [illegible] ses prétentions sur une contrée où l'autorité du Gouvernement Néerlandais [illegible] Il n'y a chez ce Gouvernement nulle incertitude au sujet des frontières de cette partie, et je me voyais donc forcé de répondre à la première proposition du Cabinet de Londres que [illegible] admettre le besoin de faire instituer une enquête sur les lieux ni un motif quelconque de recourir à une sentence arbitrale.

Ainsi que j'ai déjà eu l'honneur de vous en faire part, avant que cette réponse pût être donnée, une proposition d'une toute autre nature nous fut adressée. Elle tend, selon le désir de la "British North Borneo Company," à faire admettre par voie d'arrangement le 4° latitude septentrionale comme frontière entre son territoire et les possessions Néerlandaises sur la côte orientale de Bornéo. De cette manière le territoire de la Compagnie se trouverait étendu jusqu'au sud de l'embouchure du Sibuco, par conséquent au delà même des limites tracées dans les actes de cession susmentionnés. Il est évident, M. le Comte, que pareil "arrangement" ne serait autre chose qu'une cession de territoire par le Gouvernement Néerlandais à la "British North Borneo Company." Or, pour les motifs déjà exposés dans votre note du 1er Décembre dernier, le Gouvernement du Roi ne peut en aucun cas se prêter à [illegible], ni sacrifier au profit de la dite Compagnie des droits incontestables et bien fondés.

Dans votre note susmentionnée il a été [illegible], Milord, qu'il n'est pas exact de dire comme le fait l'office de Mr. [illegible] du 14 dernier, que récemment encore le Gouvernement Néerlandais ne prétendait rien au delà du 4° 20′ latitude septentrionale.

M. le Ministre d'[illegible] a encore mentionné le fait que les autorités Néerlandaises ont arboré le drapeau national à Batoe Tinagat. Ce fait était depuis longtemps connu du Gouvernement Britannique, qui l'a même déjà relevé sur la Carte de Bornéo communiquée au Parlement avec la correspondance relative aux réclamations de l'Espagne. Quand au bâtiment de guerre stationné sur la Rivière [illegible], sa seule destination est de protéger l'établissement Néerlandais sur cette rivière et [illegible] d'en empêcher le libre [illegible]. Vous pouvez, M. le Comte, à cet égard encore vous référer à votre note du 1er Décembre où l'intention du Gouvernement Royal de n'entraver en rien le commerce et la navigation a été manifestée de la manière la plus formelle.

Le Gouvernement du Roi, [illegible], se voit donc absolument forcé de décliner également les propositions qui lui ont été adressées en dernier lieu. S'il regrette vivement de ne pouvoir en cette occasion contribuer à réaliser les vues du Gouvernement de Sa Majesté Britannique, il a en même temps la ferme conviction que ce Gouvernement appréciera la valeur des motifs [illegible] qui ont dicté cette résolution.

Veuillez vouloir bien, M. le Comte, [illegible] à son Excellence le Principal Secrétaire d'État pour les Affaires Étrangères, et recevoir, &c.

(Signé) ROCHUSSEN.

# Annex 33

# PROTOCOL RECOGNIZING THE SOVEREIGNTY OF SPAIN IN THE ARCHIPELAGO OF JOLÓ (SULU), DATED 7 MARCH 1885 (FRENCH VERSION WITH F.O. ENGLISH TRANSLATION)

# APÉNDICE III.

## PROTOCOLO

### AJUSTADO ENTRE LOS GOBIERNOS DE ESPAÑA, ALEMANIA Y LA GRAN BRETAÑA, RECONOCIENDO LA SOBERANÍA DE ESPAÑA EN EL ARCHIPIÉLAGO DE JOLÓ, Y REGULARIZANDO LA LIBERTAD DEL COMERCIO Y DE LA NAVEGACION EN EL MISMO.

FIRMADO EN UN SOLO TEXTO FRANCÉS
EN MADRID Á 7 DE MARZO DE 1885.

Les soussignés:

Son Excellence don José Elduayen, Marquis del Paso de la Merced, Ministre d'Etat de Sa Majesté le Roi d'Espagne;

Son Excellence Monsieur le Comte Solms Sonnenwalde, Envoyé extraordinaire et Ministre Plénipotentiaire de Sa Majesté l'Empereur d'Allemagne;

et Son Excellence Sir Robert B. D. Morier, Envoyé extraordinaire et Ministre Plénipotentiaire de Sa Majesté Britannique;

dûment autorisés pour mener à terme les négotiations poursuivies à Londres et à Berlin, pendant les années 1881 et 1882, par les Représentants de Sa Majesté le Roi d'Espagne près des Gouvernements de la Grande Bretagne et de l'Allemagne, dans le but d'obtenir de ces deux Puissances la reconnaissance solennelle de la souveraineté de l'Espagne sur l'Archipel de Sulu (Joló), se sont mis d'accord sur les articles suivants:

*Art.* 1er. Les Gouvernements de l'Allemagne et de la Grande Bretagne reconnaissent la souveraineté de l'Espagne sur les points occupés effectivement, ainsi que sur ceux qui ne le seraient pas encore, de l'Archipel de Sulu (Joló), dont les limites sont établies dans l'article 2.

*Art.* 2. L'Archipel de Sulu (Joló), conformément à la définition contenue dans l'art. 1er. du Traité signé le 23 Septembre 1836 entre le Gouvernement Espagnol et le Sultan de Sulu (Joló), comprend toutes les îles qui se trouvent entre l'extremité occidentale de l'île de Mindanao, d'une part, et le continent de Bornéo et l'île de Paragua, de l'autre, à l'exception de celles qui sont indiquées dans l'art. 3.

Il est entendu que les îles de Balabac et de Cagayan-Joló font partie de l'Archipel.

*Art.* 3. Le Gouvernement Espagnol renonce vis-à-vis du Gouvernement Britannique, à toute prétention de souveraineté sur les territoires du continent de Bornéo qui appartiennent, ou qui ont appartenu dans le passé, au Sultan de Sulu (Joló), y comprises les îles voisines de Balambangan, Banguey et Malawali, ainsi que toutes celles comprises dans une zone de trois lieues maritimes le long des côtes et qui font partie des territoires administrés par la Compagnie dite «British North Borneo Company.»

*Art.* 4. Le Gouvernement Espagnol s'engage à exécuter, dans l'Archipel de Sulu (Joló) les stipulations contenues dans les articles 1, 2 et 3 du protocole signé à Madrid le 11 Mars 1877, c'est à dire:

1. Le commerce et le trafic direct des navires et des sujets de la Grande Bretagne, de l'Alle-

magne et des autres Puissances sont déclarés et seront absolument libres avec l'Archipel de Sulu (Joló), et dans toutes ses parties, ainsi que le droit de pêche, sans préjudice des droits reconnus à l'Espagne par le présent Protocole, conformément aux déclarations suivantes:

1. Les Autorités espagnoles ne pourront pas exiger à l'avenir que les navires et les sujets de la Grande Bretagne et de l'Allemagne et des autres Puissances, se rendant en toute liberté à l'Archipel de Sulu, d'un point à un autre de celui-ci sans distinction, ou de là dans toute autre partie du monde touchent avant ou après à un point désigné dans l'Archipel ou ailleurs, qu'ils payent des droits quelconques ou se procurent une permission de ces Autorités, qui de leur côté s'abstiendront de tout empêchement et de toute intervention dans le trafic susdit.

Il est bien entendu que les Autorités espagnoles n'empêcheront d'aucune manière et sous aucun prétexte, l'importation et l'exportation libre de tous les genres des marchandises sans exception, sauf dans les points occupés et conformément à la déclaration 3, et que dans tous les points non occupés effectivement par l'Espagne, ni les navires, ni les sujets précités, ni leur marchandises ne seront soumis à aucun impôt, ou droit, ou payement quelconque, ni à aucun règlement sanitaire ou autre.

3. Dans les points occupés par l'Espagne dans l'Archipel de Sulu, le Gouvernement espagnol pourra introduire des impôts et des règlements sanitaires et autres pendant l'occupation effective des points indiqués. Mais de son côté l'Espagne s'engage à y entretenir les établissements et les employés nécessaires pour les besoins du commerce et pour l'application des dits règlements.

Il est néanmoins expressément entendu, et le Gouvernement espagnol étant résolu de son côté à ne pas appliquer aux points occupés des règlements restrictifs, prend volontiers l'engagement, qu'il n'introduira pas dans ces points, des impôts ni des droits supérieurs à ceux fixés par les tarifs de l'Espagne ou par les Traités ou Conventions entre l'Espagne et tout autre Puissance. Il n'y mettra pas non plus en vigueur des règlements exceptionnels applicables au commerce et aux sujets de la Grande Bretagne, de l'Allemagne et des autres Puissances.

Dans le cas où l'Espagne occuperait effectivement d'autres points dans l'Archipel de Sulu en y entretenant les établissements et les employés nécessaires aux besoins du commerce, les Gouvernements de la Grande Bretagne et de l'Allemagne ne feront pas d'objection à l'aplication des mêmes règles stipulées pour les points actuellement occupés. Mais afin de prévenir des nouveaux cas de réclamation qui pourraient résulter de l'incertitude du commerce à l'égard des points occupés et régis par des règlements et tarifs, le Gouvernement espagnol communiquera dans chaque cas l'occupation effective d'un point dans l'Archipel de Sulu aux Governements de la Grande Bretagne et de l'Allemagne et en informera en même temps le commerce par une notification conforme publiée dans les journaux officiels de Madrid et de Manille. Quant aux tarifs et aux règlements de commerce stipulés pour les points actuellement occupés, ils ne seront applicables aux points occupés ultérieurement par l'Espagne qu'après un délai de six mois à partir de cette publication dans le journal officiel de Madrid.

Il est toujours convenu qu'aucun navire ou sujet de la Grande Bretagne, de l'Allemagne ou des autres Puissances, ne sera obligé de toucher à un des points occupés, ni en allant ni en revenant d'un point non occupé par l'Espagne, et qu'aucun préjudice ne pourra lui être causé pour ce motif ni pour aucun genre de marchandises à destination pour un point non occupé de l'Archipel.»

*Art.* 5. Le Gouvernement de Sa Majesté Britannique s'engage de veiller à ce qu'il y ait pleine liberté de commerce et de navigation sans distinction de pavillon dans le territoire du Nord de Bornéo administré par la Compagnie dite «British North Borneo Company.»

*Art.* 6. Si les Gouvernements de la Grande Bretagne et de l'Allemagne n'ont pas refusé leur adhésion au présent Protocole dans un délai de quinze jours, à partir d'aujourd'hui ou s'ils notifient leur adhésion avant ce terme par l'entremise de leurs Représentants soussignés, les présentes déclarations entreront immédiatement en vigueur.

Fait à Madrid le 7 Mars 1885.

(L. S.)—Firmado.—J. Elduayen.

(L. S.)—Firmado.—C. Solms.

(L. S.)—Firmado.—R. B. D. Morier.

**Enclosure 7.** **Translation.**

## SULU

Protocol recognising the sovereignty of Spain in the Archipelago of Jolò (Sulu), signed at Madrid by the representatives of Great Britain. Germany and Spain on March 7,1885.

The undersigned: His Excellency Sir Robert B. D. Morier, Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty, His Excellency Count Solms Sonnenwalde, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the German Emperor, and His Excellency Don José Elduayen, Marquis del Pazo de la Merced, Minister of State of Her Majesty the King of Spain, duly authorised to bring to a close the negotiations conducted in London and at Berlin during the years 1881 and 1882 by the representatives of His Majesty the King of Spain at the Courts of great Britain and Germany, for the purpose of obtaining from these two powers the formal recognition of the sovereignty of Spain over the Archipelago of Sulu (Jolò), have agreed upon the following articles:

### Article I.

The Governments of Great Britain and Germany recognize the sovereignty of Spain over the places effectively occupied as well as over those places not yet so occupied, of the archipelago of Sulu (Jolò), whereof the boundaries are determined in Article II.

### Article II.

The Archipelago of Sulu (Jolò), conformably to the definition contained in Article 1 of the Treaty signed the 23rd of September 1836, between the Spanish Government and the Sultan of Sulu ( Jolò) comprises all the islands which are found between the western extremity of the island of Mindanao on the one side, and the continent of Borneo and the Island of Paragua (Palawan) on the other side, with exception of those which are indicated in Article 111.

It is understood (entendu) that the island of Balabac and of Cagayan-Joló form part of the Archipelago.

## Article 111.

The Spanish Government relinquishes as far as regards the British Government,all claim of sovereignty over the territories of the Continent of Borneo which belong,or which have belonged in the past to the Sultan of Sulu (Joló). including therein the neighboring Islands of Balambangan, Banguey and Malawali,as well as all those islands lying within a Zone of three marine leagues along the coasts and which form part of the territoties administered by the Company styled "British North Borneo Company".

## Article IV.

The Spanish Government engages to carry out , in the Archipelago of Sulu (Joló) the stipulations contained in Articles (Declarations ) 1,2 and 3,of the Protocol signed at Madrid March 11,1877,to wit: (1) The commerce and the direct traffic of vessels and subjects of Great Britain, Germany,and the other powers with the Archipelago of Sulu ( Joló), and in all parts thereof,are declared to be,and shall be,absolutely free: as well as the right of fishing,without prejudice to the rights of Spain recognized by the present Protocol conformably to the following declarations: (11) The Spanish authorities shall not hereafter require that vessels and subjects of Great Britain, Germany,and the other powers.freely repairing to the Archipelago of Sulu (Joló), from one point of it to another without distinction or thence to any other part of the world,shall .call either before or afterwards at any specified point in the Archipelago or elsewhere;or pay any dues whatsoever;or procure a permit from the said authorities,who, on their side,shall refrain from any restriction on and interference with the above named traffic. It is well understood that the Spanish authorities shall not hinder in any manner,or under any pretext,the free importation or exportation of all kinds of merchandise without exception save at such places as are occupied,and conformably to declaration 111; and that in all the places not effectually occupied by Spain,neither the vessel nor the subjects above mentioned nor their merchandise,shall be subjected to any tax or duty or payment whatever,nor to any regulations, sanitary or otherwise(111) In those places in the Archipelago of Sulu (Joló), which are occupied by Spain,the Spanish Government shall be able to establish taxes and regulations, sanitary or other wise, during the effective occupation of the places indicated.- But Spain, on its side,engages to maintain in those places such establishments and employees as may be necessary for the requirements of commerce,and for the enforcement of said regulations.

"It is, neverthe less,expressly understood,and the Spanish Government being resolved on its side not to enforce restrictive regulations in the occupied places, readily gives the undertaking not to set up; in the said places any taxes or duties higher than those fixed by the Spanish tariffs, or by the treaties or Conventions between Spain and any other power. Further,it will not put into force exceptional regulations applicable to the commerce and subjects of Great Britain, Germany and the other powers.

"Should Spain effectively occupy other places in the Archipelago of Sulu ( Joló ) by maintaining there establishments and employees necessary for the requirements of commerce, the Governments of Great Britain and of Germany will make no objection to the application of the same rules agreed upon for the places already occupied. But in order to prevent new cases of claims which might arise from the uncertainty of traders in regard to places occupied and placed under regulations and tariffs, the Spanish Government shall communicate in each case the effective occupation of any place in the Archipelago of Sulu(Joló) to the Government of Great Britain and of Germany, and shall at the same time inform the trade by means of a suitable notice published in the official journals of Madrid and Manila. As regards the Tariffs and Regulations for commerce agreed upon for the places now occupied they shall not be applicable to the places hereafter occupied by Spain until after a period of six months, dating from the said publication in the official journal of Madrid. It is agreed as hereinbefore, that no vessel or subject of Great Britain, of Germany or of the other powers shall be obliged to touch at one of the places occupied, either in going to or returning from a place not occupied by Spain and that no prejudice will be caused to them on this account or on account of any kind of merchandise shipped to a non-occupied place in the archipelago."

### Article V.

"The Government of Her Britannic Majesty engages to see to it that there shall be entire freedom of commerce and navigation, without flag discrimination, in the territory of North Borneo administered by the Company, styled" British North Borneo Co."

## Article VI.

If the Governments of Great Britain and of Germany do not refuse their adhesion to the present protocol within a period of fifteen days from this date, or if they notify their adhesion before the expiration of that period through their undersigned representatives, the present declarations shall come into immediate effect.

Done at Madrid, March 7,1885.

(L.S.) R. B. D. Morier.

(L.S.) L.ELDUAYEN, ( L.S.). F. C. SOLMS.

## Annex 34

# AGREEMENT BETWEEN HER MAJESTY'S GOVERNMENT AND THE BRITISH NORTH BORNEO COMPANY DATED 12 MAY 1888

## No. 66.

## NORTH BORNEO.

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Title. *Agreement between Her Majesty's Government and the British North Borneo Company.*

Preamble. WHEREAS by virtue of certain grants and commissions from the Sultans, Chiefs and Rulers of the territories in North Borneo hereinafter mentioned and by other lawful means, all rights of sovereignty over the said territories are vested in the British North Borneo Company.

And whereas by Her Majesty's Royal Charter of Incorporation, bearing date the 1st day of November, 1881, the Company was authorised and empowered to assume the government of the said territories subject to the conditions in the said Charter contained:

And whereas the said territories are now governed and administered by the Company as an independent State, hereinafter referred to as "the State of North Borneo:"

And whereas the Company have represented to Her Majesty's Government the desire of that State to be placed under the protection of Her Majesty the Queen, under the conditions hereinafter mentioned; it is hereby agreed and declared as follows:—

### ARTICLE I.

Description of territories. The State of North Borneo comprises the territories specified in the said Royal Charter, and such other territories as the Company have acquired, or may hereafter acquire, under the provisions of Article XV of the said Charter.

It is divided into nine provinces, namely:—

1. Province Alcock;
2. Province Cunliffe;
3. Province Dent;

4. Province Dewhurst;
5. Province Elphinstone;
6. Province Keppel;
7. Province Martin;
8. Province Mayne; and
9. Province Myburgh.

## ARTICLE II.

North Borneo to be a "protected independent State."

The State of North Borneo shall continue to be governed and administered as an independent State by the Company in conformity with the provisions of the said Charter, under the protection of Great Britain; but such protection shall confer no right on Her Majesty's Government to interfere with the internal administration of that State further than is provided herein or by the Charter of the Company.

## ARTICLE III.

Relations with foreign States.

The relations between the State of North Borneo and all foreign States, including the States of Brunei and of Sarawak, shall be conducted by Her Majesty's Government, or in accordance with its directions; and if any difference should arise between the Government of North Borneo and that of any other State, the Company, as representing the State of North Borneo, agrees to abide by the decision of Her Majesty's Government, and to take all necessary measures to give effect thereto.

## ARTICLE IV.

British Consular officers.

Her Majesty's Government shall have the right to establish British Consular officers in any part of the said territories, who shall receive Exequatur in the name of the Government of North Borneo. They shall enjoy whatever privileges are usually granted to Consular officers, and they shall be entitled to hoist the British flag over their residences and public offices.

## ARTICLE V.

National and most-favoured-nation treatment.

British subjects, commerce, and shipping shall enjoy the same rights, privileges and advantages as the subjects, commerce, and shipping of the most favoured nation, s well as any other rights, privileges, and advantages which may be enjoyed by the ubjects, commerce, and shipping of the State of North Borneo.

## ARTICLE VI.

Alienation of territory.

No cession or other alienation of any part of the territory of the State of North Borneo shall be made by its Government to any foreign State, or the subjects or itizens thereof, without the consent of Her Majesty's Government; but this restriction hall not apply to ordinary grants or leases of lands or houses to private individuals for urposes of residence, agriculture, commerce, or other business.

In witness whereof the Undersigned have signed the present Agreement in pplicate, and have affixed thereto their seals.

Done at London the 12th day of May, 1888.

(L.S.) (Signed) SALISBURY.
(L.S.) (Signed) RUTHERFORD ALCOCK.

## Annex 35

# DESPATCH FROM SIR H. RUMBOLD TO LORD SALISBURY DATED 19 NOVEMBER 1888

a copy of which I have the honour

to [illegible] the

substance of the information I was

instructed to convey.

M. Hartsen seemed somewhat taken

aback by my communication. He

[illegible]

[illegible] having been decided

[illegible]

be taken [illegible] boundary

question [illegible]

[illegible]

[illegible]

[illegible]

North Borneo Company and inquired

The Hague
November 19 - 1888.

F 138.

idential My Lord,

I called upon M. Hartsen this morning and informed him that I had received directions from Your Lordship to acquaint him in confidence with the fact that agreements had been formally concluded by which British protection was established over Sarawak, Brunei, and the territory of the British North Borneo Company.

mémoire

At the same time I left with His Excellency an Aide Mémoire in French,

a

Marquis of Salisbury K.G.
etc etc etc

③ — 5.19.

a copy of which I have the honour to enclose herewith, containing the substance of the information I was instructed to convey.

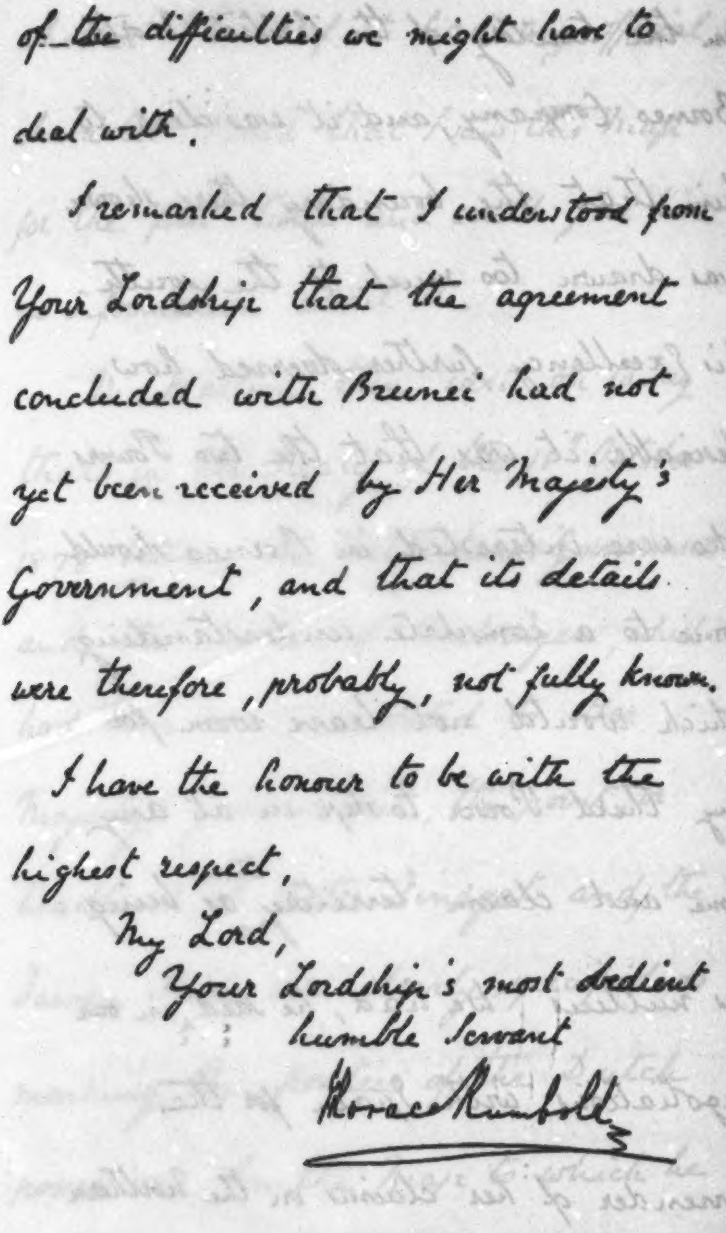
Mr. Hartsen seemed somewhat taken aback by my communication. He thanked me, however, but observed that the protectorate having now been decided upon, he hoped that steps would soon be taken to determine boundaries (procéder à la délimitation). His Excellency then produced a Map, published by Stanford, purporting to show the territories of the British North Borneo Company, and enquired whether

whether I knew if it had any official character. I said that I saw this Map for the first time and could give him no information about it.

M. Hartsen then went on to say that in the Treaty of the 18th October 1878 between the Netherlands Government and the Sultan of Boeloengan, which had been communicated to Her Majesty's Government, the point, or headland, of Batoe Tinagat and the Tawau River were clearly specified as marking the frontier of the Dutch possessions. In the Map to which he referred both these points were included

in

in the territory of the British North Borneo Company, and it was clear to him that the boundary there shown was drawn too much to the south. His Excellency further observed how desirable it was that the two Powers who were interested in Borneo should come to a complete understanding which would not leave room for any third Power to step in at any time and claim territory there as being res nullius. We had, he said, in our negotiations with Spain for the surrender of her claims on the northern part of the Island, sufficient experience of



of the difficulties we might have to deal with.

I remarked that I understood from Your Lordship that the agreement concluded with Brunei had not yet been received by Her Majesty's Government, and that its details were therefore, probably, not fully known.

I have the honour to be with the highest respect,

My Lord,
Your Lordship's most obedient
humble Servant
Horace Rumbold

## Annex 36

# DRAFT *MEMORANDUM ON THE DISPUTED BOUNDARY BETWEEN THE BRITISH NORTH BORNEO COMPANY AND THE DUTCH POSSESSIONS ON THE NORTH EAST COAST OF THAT ISLAND*, BY SIR E. HERTSLET, DATED 20 DECEMBER 1888

### Memo. on the disputed Boundary between the British North Borneo Company and the Dutch Possessions on the North East Coast of that Island.

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On the 21 December 1881 Count de Bylandt was informed that H.M.'s Govt. had, in granting a Charter to the British North Borneo Co., imposed certain restrictions and conditions for the adjustment of Boundaries and the settlement of any problems which might arise between them and the Sultans, or any Foreign Govt.

On the 31 May and 31 August 1882 Count de Bylandt addressed notes to Lord Granville on the subject of the Boundary of the Dutch Possessions, on the N.E. coast of Borneo ; to which his Lordship replied, on the 31 August following.

On the 1 December 1882 Count de Bylandt addressed a further note to Lord Granville upon the subject of the disputed boundary in which he alluded to the difficulty there was in ascertaining the exact position of the Sibuco River which the Company claimed as their southernmost boundary.

It was, in consequence, thought advisable to drop the discussion, as no positive information could be produced to show what was really intended to be the exact position of that River in the Deeds by which the Company became possessed of territory on that part of the coast of Borneo, and it was suggested that the best way of arriving at a settlement of the points in dispute would be for the British and Netherland Governments each to nominate a Commissioner authorised to examine into the question on the spot, with access to all documents and maps and it was proposed that a Joint Report should then be drawn up by the Commissioners for presentation to their respective Govts. It was further suggested that, in the event of the adoption of this course not resulting in an agreement being come to, recourse might be had to arbitration.

This proposal was made to the Netherlands Govt. on the 13 January 1883, but as no reply was returned to it by the 9 March following and as news had reached this country that the Netherland authorities had hoisted the Dutch flag at Batu Tinagat (4°19NL), a point on the coast north of the Sibuco River claimed by the Company, H.M.'s minister at the Hague was on that day instructed to propose to the Dutch Govt., as a compromise of all conflicting claims, the acceptance of the 4° of North latitude as the limit to be recognised on both sides irrespective of the more or less erratic course of any river [illegible] it was stipulated that the [illegible] of any river the entrance to which might be situated to the north of 4° North latitude should be left open to [illegible]of all nations. This he did but the Dutch Govt. declined these various proposals, as they said that they could only see in them a request for a cession of territory which belonged to the Netherlands.

Count de Bylandt then called at the Foreign Office and had an interview with Sir Julian Pauncefote on the subject, when Sir Julian pointed out that, as the territory was in dispute, H.M.'s Govt. did not consider it Dutch Territory. He also pointed out that the maps laid before Parliament described it as territory claimed by Holland and not recognised as Dutch by H.M.'s Govt. ; adding that H.M.'s Govt. did not ask for a 'cession', as that would be admitting the title of Holland to the territory in dispute : he then reminded the Dutch Minister that H.M.'s Govt. had proposed a compromise or arbitration ; but that his Govt. had refused both and had resorted to force by sending Gun Boats to occupy the territory in dispute ; which he said was the ultimate ratio (sic) which H.M.'s Govt. wished to avoid.

Count de Bylandt replied that his Government was determined not to yield to force ; and that they did not recognise the right of the British Govt. to interfere, as North Borneo was not British territory and their dispute was not with the British Government but with a private association. To this Sir Julian Pouncefote replied that H.M.'s Govt had the right to protect British subjects against the attempt of any foreign state to despoil them of property lawfully acquired and paid for by them, and that if Count de Bylandt's arguments held good, Holland might tomorrow take possession of the whole of North Borneo and by say that it was no business of the British Govt.

Sir Julian further reported that if the Dutch case was so clear, why were they afraid of arbitration ?, for that, according to Count de Bylandt's view the British Govt. would be out of court in 5 minutes, before any arbitrator.

After some further discussion Count de Bylandt expressed a hope that Lord Granville would be able to make some new proposal which might lead to a solution of the difficulty ; for he said that public feeling was greatly excited in Holland, and no Ministry would dare to refer to arbitration the question of title to territory formally and actually annexed to the Dominions of Holland, and over which the flag was flying.

Here the correspondence with the Dutch Govt. rested for a time ; but on the 24 January /84 H.M.'s Govt. renewed their proposal for a joint survey, or [illegible]of the dispute to arbitration but on the 17 March 1884 Count de Bylandt communicated to Lord Granville the copy of a despatch which he had received from his Government, in which they maintained that their claim was clearly established by Count de Bylandt's notes of the 1 December 1882, and 25 March 1883, and which, they observed, had never been answered. Reasons were then again [illegible] why the proposed arbitration would not be acceptable, and why a Commission of enquiry on the spot would be superfluous.

No reply was returned to this communication, as it was thought to be useless to attempt to answer, seriatim, the arguments put forward in the above mentioned notes, until documentary proofs were forthcoming showing the exact limits of the territory which it was said had been ceded by one native Sultan to the Company and by another, to the Dutch.

It should, however, be remembered that Count de Bylandt said, in his communication of the 17 March 1884 that, if H.M.'s Govt. took up the case of the Company and claimed for [illegible] the disputed territory, the Netherland Govt. claimed the right to an answer to the arguments on which they based their title to possession ; and that he added that, when the question of the littoral was established, the Netherlands Govt. would cooperate with the Company in marking [illegible] boundaries.

After this, a map was issued by the Netherlands Govt. on which was marked the Boundary which the Dutch Colonial Authorities claimed as the limit of their Possessions on the N. E. Coast of Borneo, and a copy of it was officially communicated to H.M.'s Govt. through H.M.'s Minister at the Hague, on the 18th November 1885.

On an inspection of this map it will be seen that the Dutch boundary was marked as starting from Batu Tingat, to the north of the Sibuco River, so as to include not only both sides of that river but various other rivers within Dutch territory ; that it then proceeded almost due north for about 17 miles and then swept around first in a westerly then in a southwesterly direction.

It was, however, still considered advisable to let the Boundary question stand over until it had been decided whether the proposal which had been made by the Colonial Office to proclaim North Borneo to be under British Protection was adopted, for, in the event of its being so, it was thought that H.M.'s Govt. would be in a better position to settle the matter with the Dutch. Sir Julian Pouncefote was further of opinion that, in any case, if the Boundary claimed by the Company had to be given up, H.M.'s Govt. ought to secure free transit and navigation along the great River flowing from the Company's territories, through the district claimed by Holland, to the sea ; and which, he said, he gathered from Count de Bylandt, the Dutch Govt. would be prepared to concede.

On the 19 of November last the Dutch Government were informed, confidentially, that agreements had been formally concluded for the establishment of a British Protectorate over Sarawak, Brunei, and the territory of the 'British North Borneo Company', and the time has, therefore, now arrived for entering into negotiations with the Dutch Government for a settlement of the boundary dispute on equitable terms ; the principal object of which, so far as this Country is concerned, would appear to be to assure to the Company not only free transit on the Sibuco River, but also on any other rivers which may flow into the sea from the Company's territory through that of the Dutch.

The Dutch Minister for Foreign Affairs recently told H.M.'s Minister at the Hague that, now that a Protectorate has been decided upon, he hoped that steps would soon be taken to determine Boundaries, but he pointed out that, in a map of the North Borneo Co.'s territories recently published by Stanford, Batu Tinagat and the Tawau River were included in the Company's territory, whereas they were both mentioned in the Treaty between The Netherlands Govt. and the Sultan of Boeloengan of 18 October 1878.

This statement is correct, as will be seen from the accompanying tracing from that map.

It will have been observed however that no attempt has been made in this Paper to consider the merits of the claim of the Company to the Boundary which they have repeatedly, but only vaguely, put forward, for to do so would necessitate a much more elaborate memo, and it might, after all, be found to be unnecessary should the Company now be prepared to recognise the right of the Dutch to the occupation of Batu Tingat as well as the Boundary Line which they claim, provided that the free navigation of the Sibuco and other rivers be secured to them (see Sir R Alcock's letter of 26 Feb 1883)

(signed) E Hertslet

FO
Dec. 20/88

Mem.: on the disputed Boundary between the British North Borneo Company and the Dutch Possessions on the north east Coast of that Island.

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Blue Book

On the 21 November 1881 Count de Bylandt was informed that H.M.'s Govt had, in granting a Charter to the British North Borneo Co., imposed certain restrictions and conditions for "the adjustment of Boundaries and the settlement of any questions which might arise between them and the Sultans, or any Foreign Govt.

Conf. Print No 4777
pp. 4, 7, 9

On the 31 May and 31 August 1882, Count de Bylandt addressed Notes to Lord Granville on the subject of the Boundary of the Dutch Possessions on the N.E. coast of Borneo; to which his Lordship replied on

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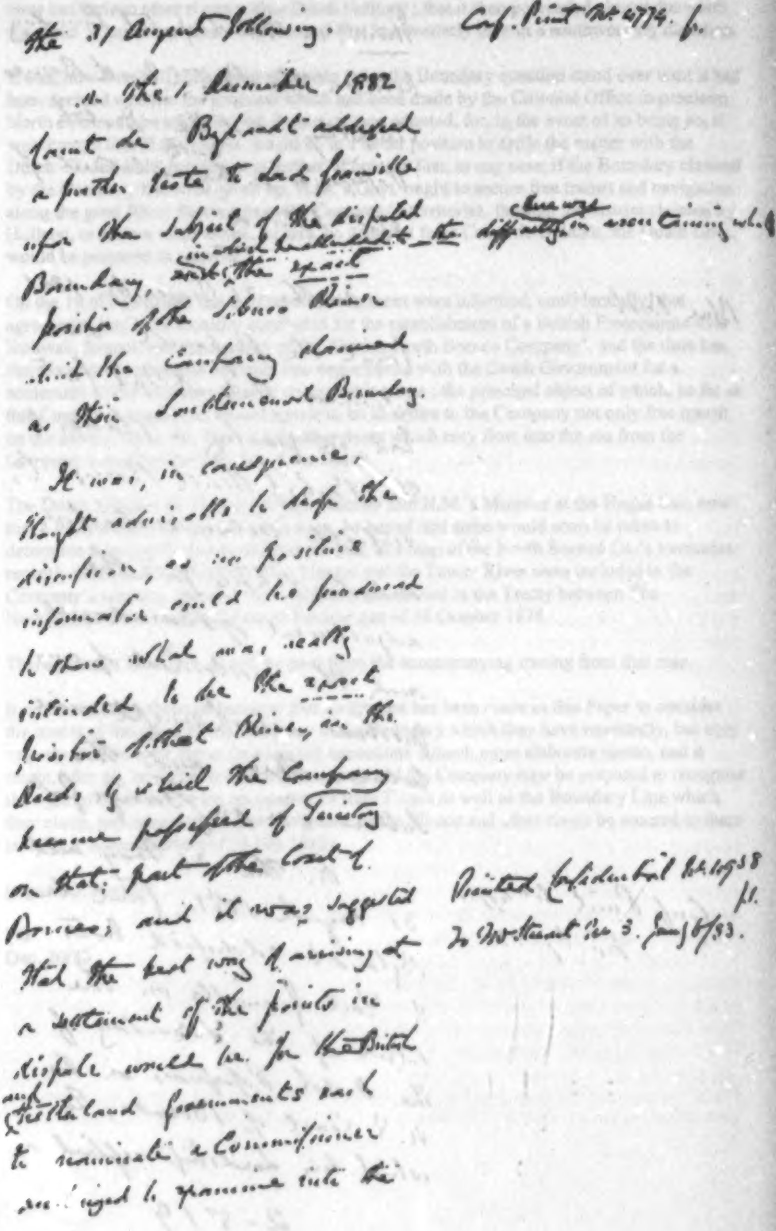
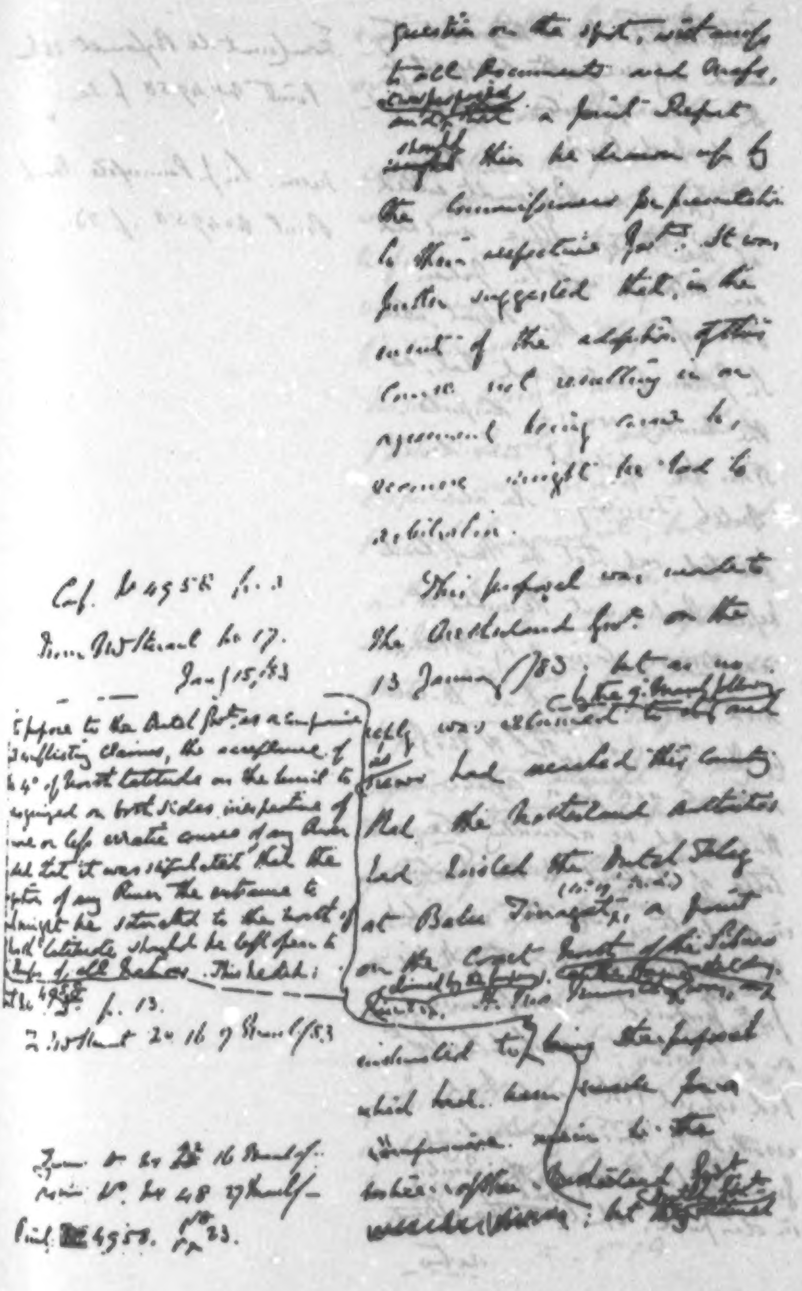


the 31 August following. Conf. Print No 4774. p.

On the 1 December 1882
Count de Bylandt addressed
a further note to Lord Granville
upon the subject of the disputed
in which he attributed to the difficulty in ascertaining which
Boundary, and the exact
position of the Sibuco River
which the Company claimed
as their Southernmost Boundary.

It was, in consequence,
thought advisable to defer the
discussion, as no positive
information could be produced
to show what was really
intended to be the exact
position of that River, in the
deeds by which the Company
became possessed of Territory
on that part of the Coast of
Borneo; and it was suggested
that the best way of arriving at
a settlement of the points in
dispute would be for the British
and Netherland Governments each
to nominate a Commissioner
assigned to examine into the

Printed Confidential No 4938 p.1.
To Mr Stuart No 3. Jan 6/83.



[illegible] Foreign Office [illegible]

[illegible]

question on the spot, with access to all documents and maps, ~~and that~~ a joint Report should then be drawn up by the Commissioners for presentation to their respective Govts. It was further suggested that, in the event of the adoption of this course not resulting in an agreement being come to, recourse might be had to arbitration.

This proposal was made to the Netherland Govt. on the 13 January /83, but as no reply was returned [illegible] news had reached this country that the Netherland authorities had hoisted the Dutch flag (in 4° 20' N.) at Batu Tinagat, a point on the coast ~~North of the Sibuco~~ claimed by the Company [illegible] instructed to bring the proposal which had been made for a Commission again to the notice of the Netherland Govt. [illegible]; but [illegible]

Conf. No 4958 p. 3

From Mr Stuart No 17. Jan 15/83

[illegible]ropose to the Dutch Govt. as a compromise [illegible]onflicting claims, the acceptance of the 4° of North latitude on the coast to [illegible] assigned on both sides irrespective of [illegible] more or less erratic course of any River [illegible]d that it was stipulated that the [illegible]ation of any River the entrance to [illegible] might be situated to the north of [illegible] latitude should be left open to [illegible] ships of all nations. This [illegible]

No 4958 p. 13.

To Mr Stuart No 16 of March 6/83

From do No 28 [illegible] 16 March/—

Same do No 48 27 March/—

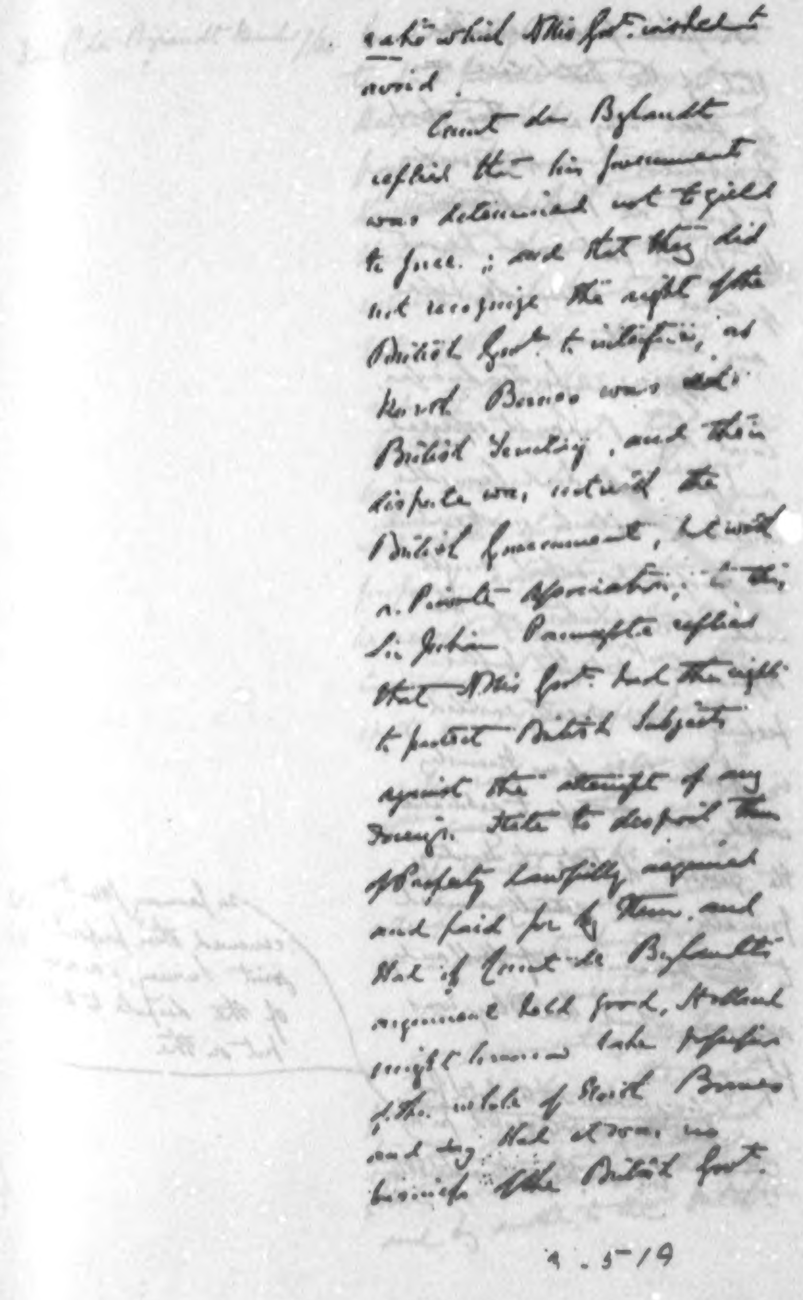
Conf. [illegible] 4958. p. 23.

~~[illegible]~~ concessions proposals; as they said they could only see in them a request for the cession of Territory which belonged to the Netherlands.

Count de Bylandt then called at the Foreign Office and had an interview with Sir Julian Pauncefote on the subject, when Sir Julian pointed out that, as the territory was in dispute, this fact did not constitute it Dutch Territory. He also pointed out that the Map laid before Parliament described it as territory claimed by Holland and not recognized as Dutch by H. M's Govt: adding that H. M's Govt did not ask for a "cession", as that would be admitting the title of Holland to the Territory in dispute; He then reminded the Dutch Minister that H. M's Govt had proposed a compromise or arbitration; but that his Govt had refused both, and had resorted to force by sending gun Boats to occupy the territory in dispute; which [illegible] the ultima ratio

From Count de Bylandt 15 Ju
Print No. 4958 f. 20.

Mem. Sir J. Pauncefote March
Print No. 4958 f. 73.



[illegible] which H.M.'s Govt. wished to avoid.

Count de Bylandt replied that his Government was determined not to yield to force; and that they did not recognize the right of the British Govt. to interfere, as North Borneo was not British territory, and their dispute was, not with the British Government, but with a Private Association; to this Sir Julian Pauncefote replied that H.M.'s Govt. had the right to protect British subjects against the attempt of any foreign State to despoil them of property lawfully acquired and paid for by them, and that if Count de Bylandt's argument held good, Holland might tomorrow take possession of the whole of North Borneo and say that it was no business of the British Govt.

9 . 5-19

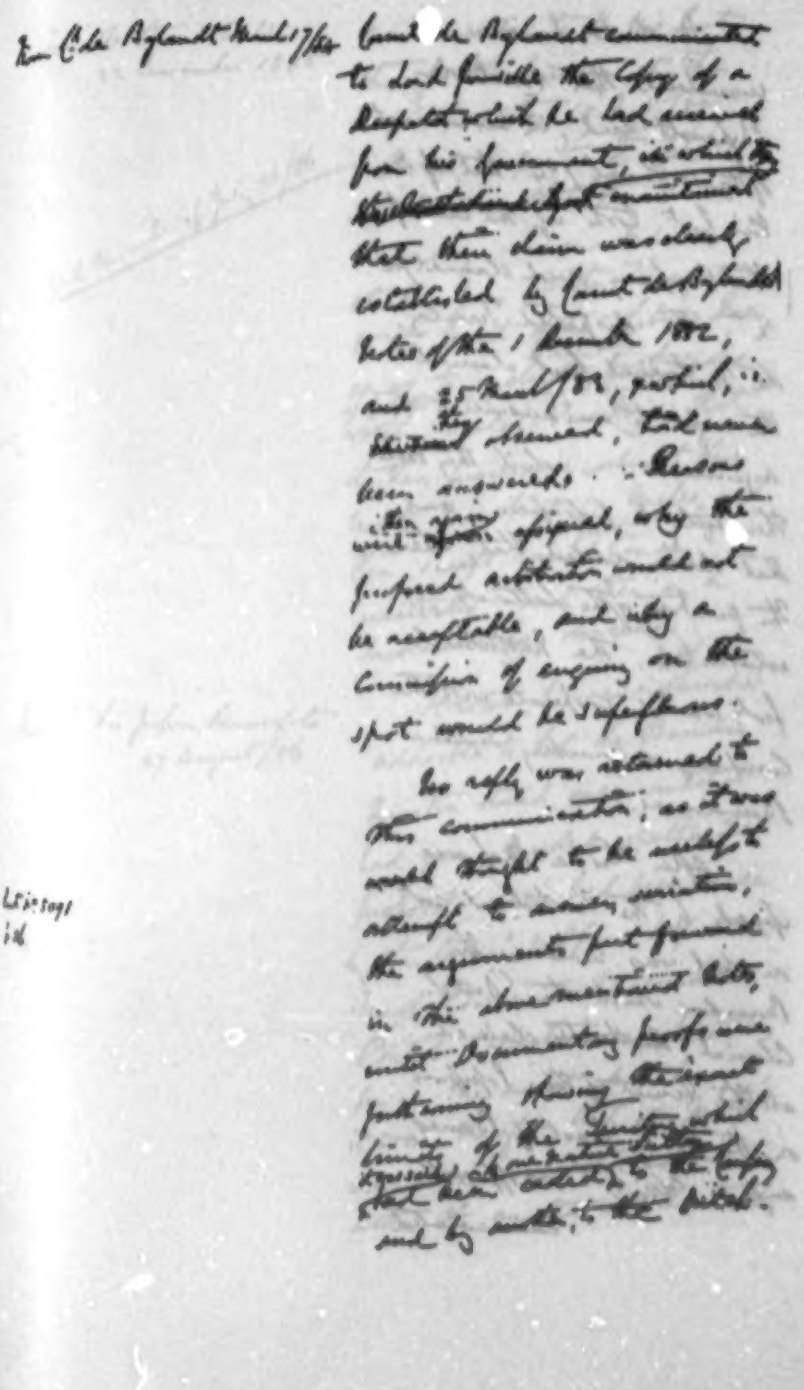
Sir Julian further remarked that if the Dutch case was so clear, why were they afraid of arbitration?, for that, according to Count de Bylandt's view, the British Govt. would be out of court in 5 minutes, before any Arbitrator.

After some further discussion, Count de Bylandt expressed a hope that Lord Granville would be able to make some new proposal which might lead to a solution of the difficulty; for he said but that public feeling was greatly excited in Holland, and no Ministry would dare to refer to arbitration the question of title to Territory formally and actually annexed to the Dominions of Holland, and over which her Flag was flying.

Correspondence with the Dutch Govt.

Here the question rested for a time; but on the 27 March 1884

24 January 1884 the Dutch renewed their proposal of joint survey, & a ref of the dispute to arbi but on the



From C. de Bylandt March 17/84

Count de Bylandt communicated to Lord Granville the Copy of a Despatch which he had received from his Government, in which ~~[illegible]~~ it was maintained that their claim was clearly established by Count de Bylandt's Notes of the 1 December 1882, and 25 March /83, which, it was stated, they deemed, had never been answered. — Reasons were then given, in original, why the proposed arbitration would not be acceptable, and why a Commission of enquiry on the spot would be superfluous.

No reply was returned to this communication, as it was thought to be useless to attempt to answer, seriatim, the arguments put forward in the above mentioned Notes, until documentary proofs were forthcoming showing the exact limits of the Territory which ~~[illegible]~~ had been ceded to the Company and by which to the British.

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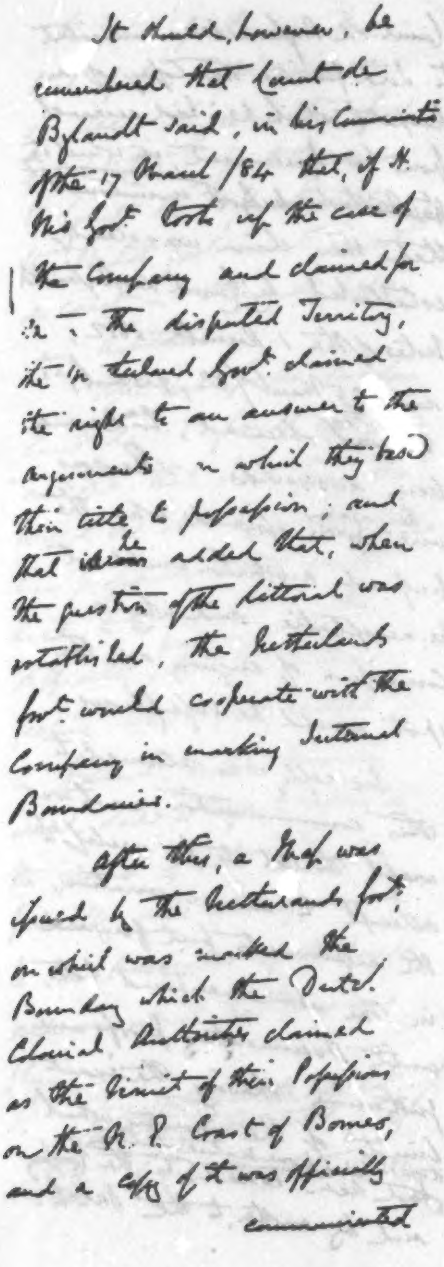
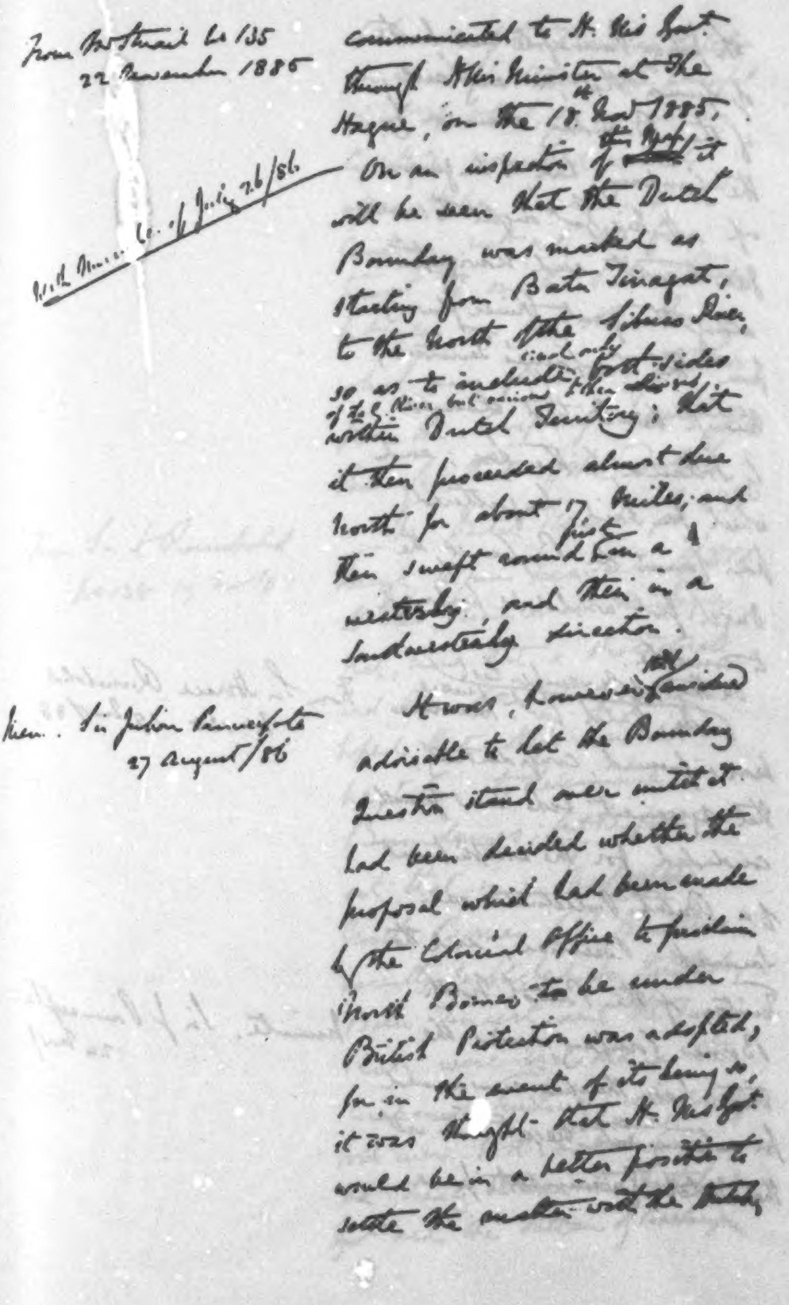


It should, however, be remembered that Count de Bylandt said, in his Memo of the 17 March /84 that, if H.M's Govt. took up the case of the Company and claimed for it the disputed Territory, the Netherland Govt. claimed the right to an answer to the arguments on which they based their title to possession; and that ~~it was~~ he added that, when the question of the littoral was established, the Netherlands Govt. would cooperate with the Company in marking Internal Boundaries.

After this, a Map was issued by the Netherlands Govt. on which was marked the Boundary which the Dutch Colonial Authorities claimed as the limit of their Possessions on the N. E. Coast of Borneo, and a copy of it was officially communicated



From Mr Stuart No 135
22 November 1885

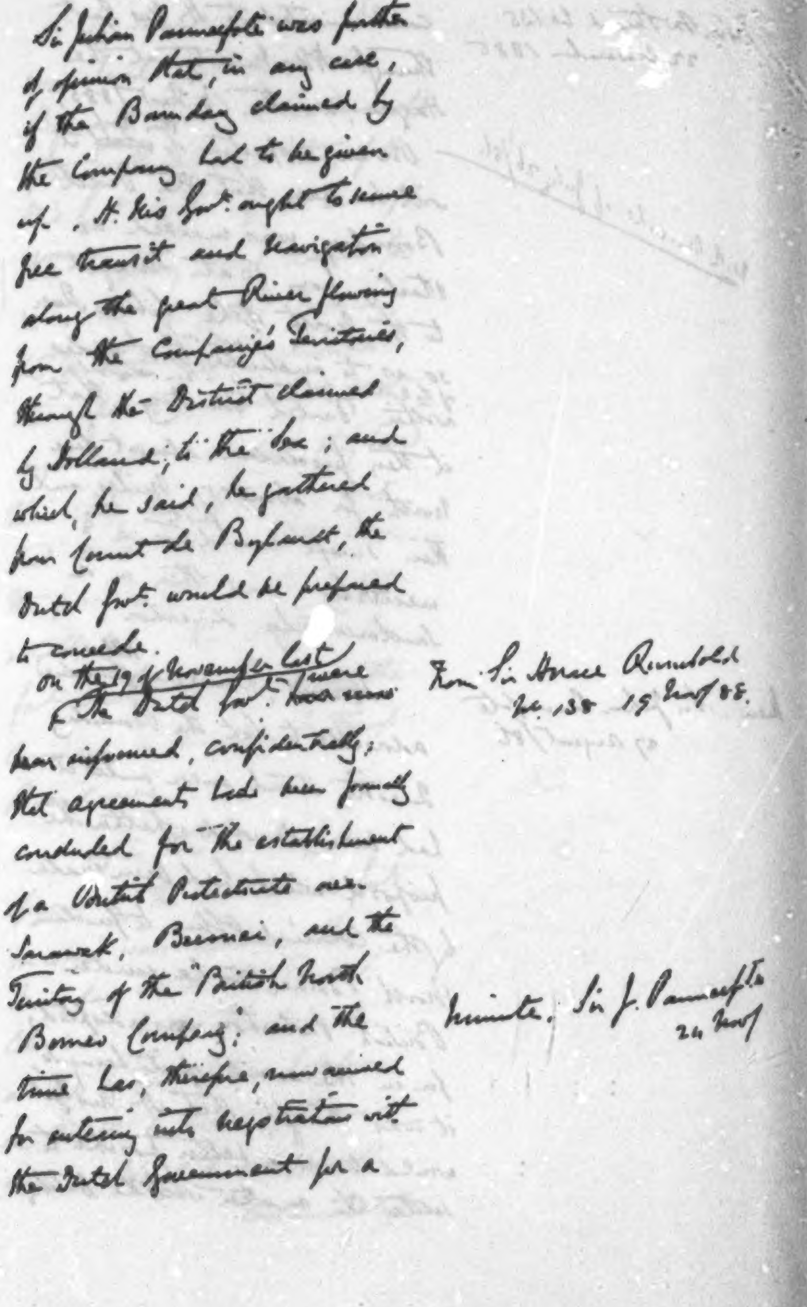
communicated to H. M's Govt. through H. M's Minister at the Hague, on the 18th Nov 1885.

With Mem. Co. of July 26/86

On an inspection of the Map it will be seen that the Dutch Boundary was marked as starting from Batu Tinagat, to the North of the Sibuco River, so as to include and only ~~both sides~~ [illegible] of the S. River but [illegible] within Dutch Territory; that it then proceeded almost due North for about 17 miles, and then swept round in a first westerly and then in a Southwesterly direction.

Mem. Sir Julian Pauncefote
27 August/86

It was, however, then considered advisable to let the Boundary Question stand over until it had been decided whether the proposal which had been made by the Colonial Office to proclaim North Borneo to be under British Protection was adopted, for in the event of its being so, it was thought that H. M's Govt. would be in a better position to settle the matter with the Dutch,

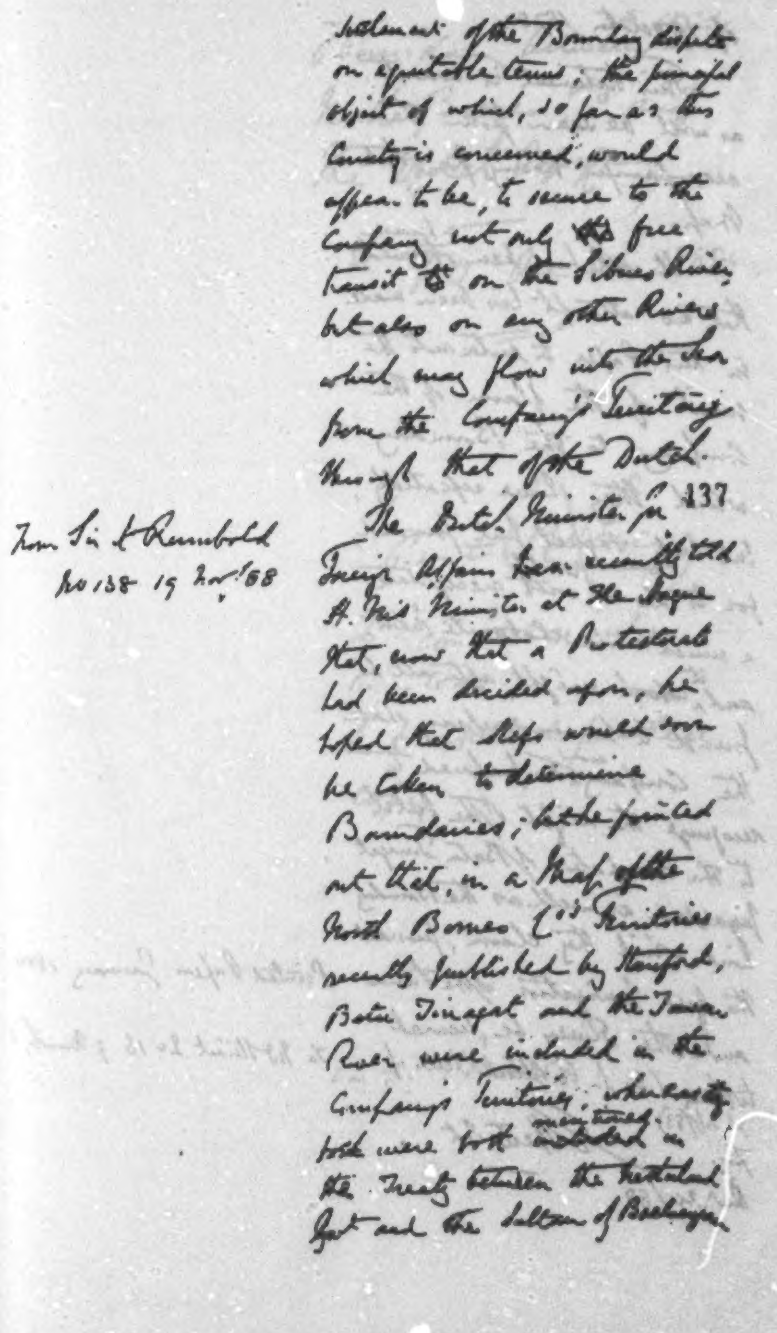


Sir Julian Pauncefote was further of opinion that, in any case, if the Boundary claimed by the Company had to be given up, H. M's Govt. ought to secure free transit and navigation along the great River flowing from the Company's Territories, through the District claimed by Holland, to the Sea; and which, he said, he gathered from Count de Bylandt, the Dutch Govt. would be prepared to concede.

On the 19 of November last the Dutch Govt. ~~have recently~~ were been informed, confidentially, that agreements had been formally concluded for the establishment of a British Protectorate over Sarawak, Brunei, and the Territory of the "British North Borneo Company": and the time has, therefore, now arrived for entering into negotiations with the Dutch Government for a

From Sir Horace Rumbold
No. 138 19 Nov/88.

Minute. Sir J. Pauncefote
24 Nov/

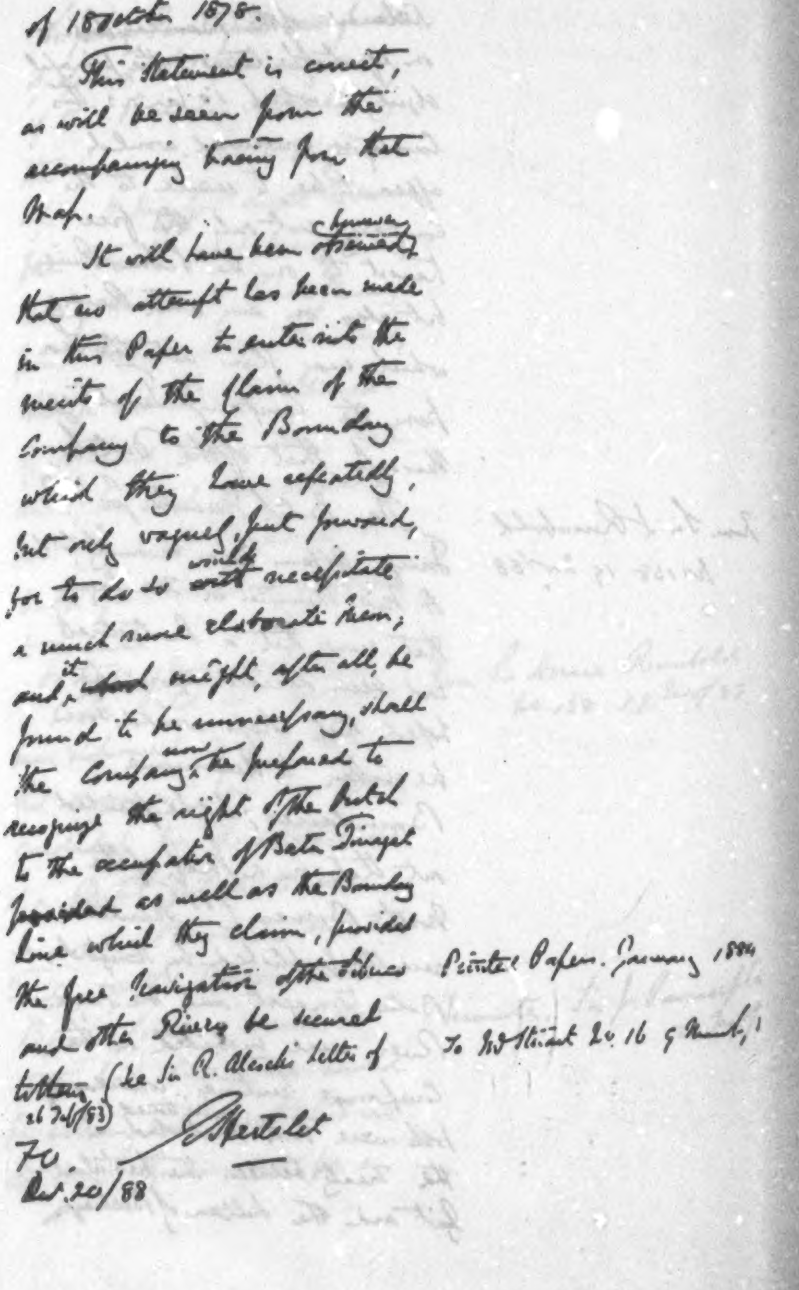


settlement of the Boundary dispute on equitable terms; the principal object of which, so far as this Country is concerned, would appear to be, to secure to the Company not only ~~the~~ free transit &c on the Sibuco River, but also on any other Rivers which may flow into the sea from the Company's Territory through that of the Dutch.

137

From Sir H. Rumbold No 138 19 Nov. '88

The Dutch Minister for Foreign Affairs has recently told H. M's Minister at the Hague that, now that a Protectorate had been decided upon, he hoped that steps would soon be taken to determine Boundaries; but he pointed out that, in a Map of the North Borneo Co's Territories recently published by Stanford, Batu Tinagat and the Tawau River were included in the Company's Territory; whereas they both were both ~~included~~ mentioned in the Treaty between the Netherland Govt and the Sultan of Boelongan.



of 18 October 1878.

This Statement is correct, as will be seen from the accompanying tracing from that Map.

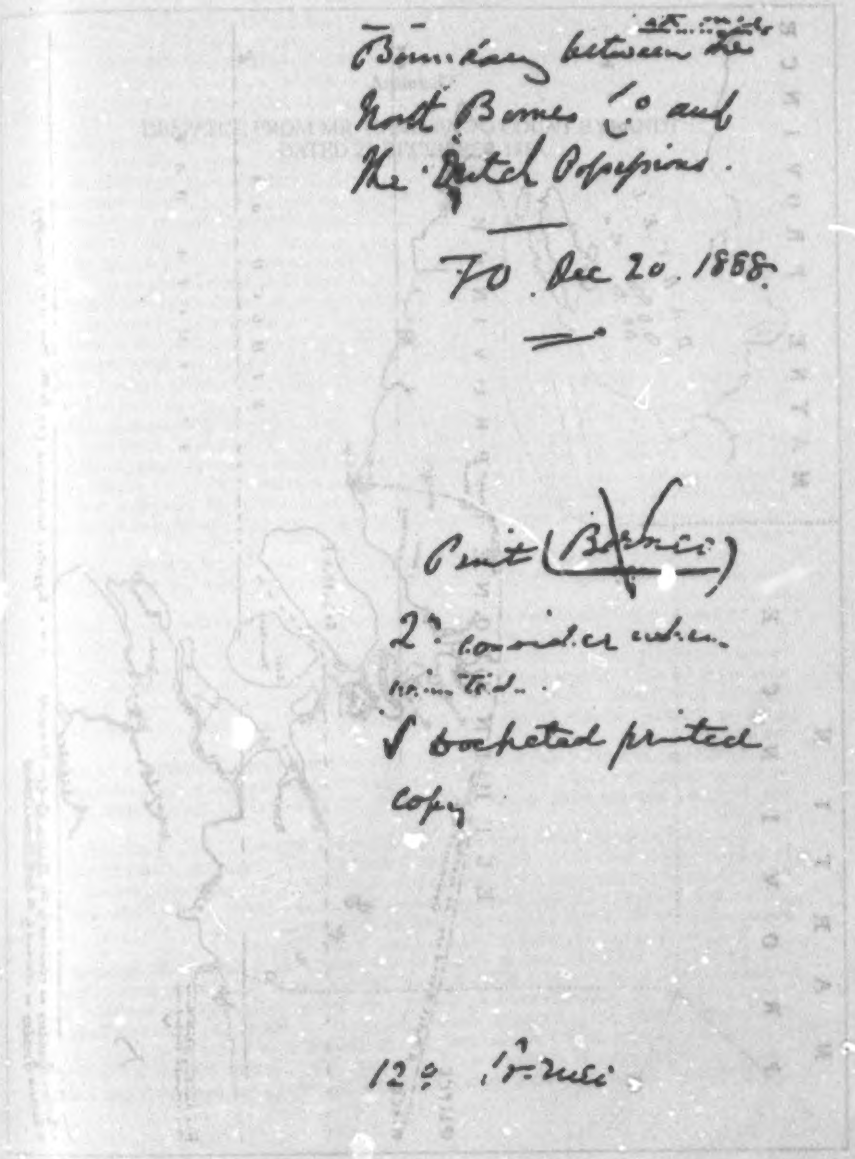
It will have been ~~observed~~ [illegible] that no attempt has been made in this Paper to enter into the merits of the claim of the Company to the Boundary which they have repeatedly, but only vaguely, put forward, for to do so ~~with~~ would necessitate a much more elaborate Paper; and ~~which~~ it might, after all, be found to be unnecessary, should the Company now be prepared to recognize the right of the Dutch to the occupation of Batu Tinagat Jurisdiction as well as the Boundary Line which they claim, provided the free navigation of the Sibuco and other Rivers be secured to them (see Sir R. Alcock's letter of 26 Feb/83)

E. Hertslet

FO
Dec. 20/88

Printed Paper. January 1884

To Mr Stuart No. 16 of March,



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Boundary between the North Borneo Co and the Dutch Possessions.

FO. Dec 20. 1888.

Print (Borneo)

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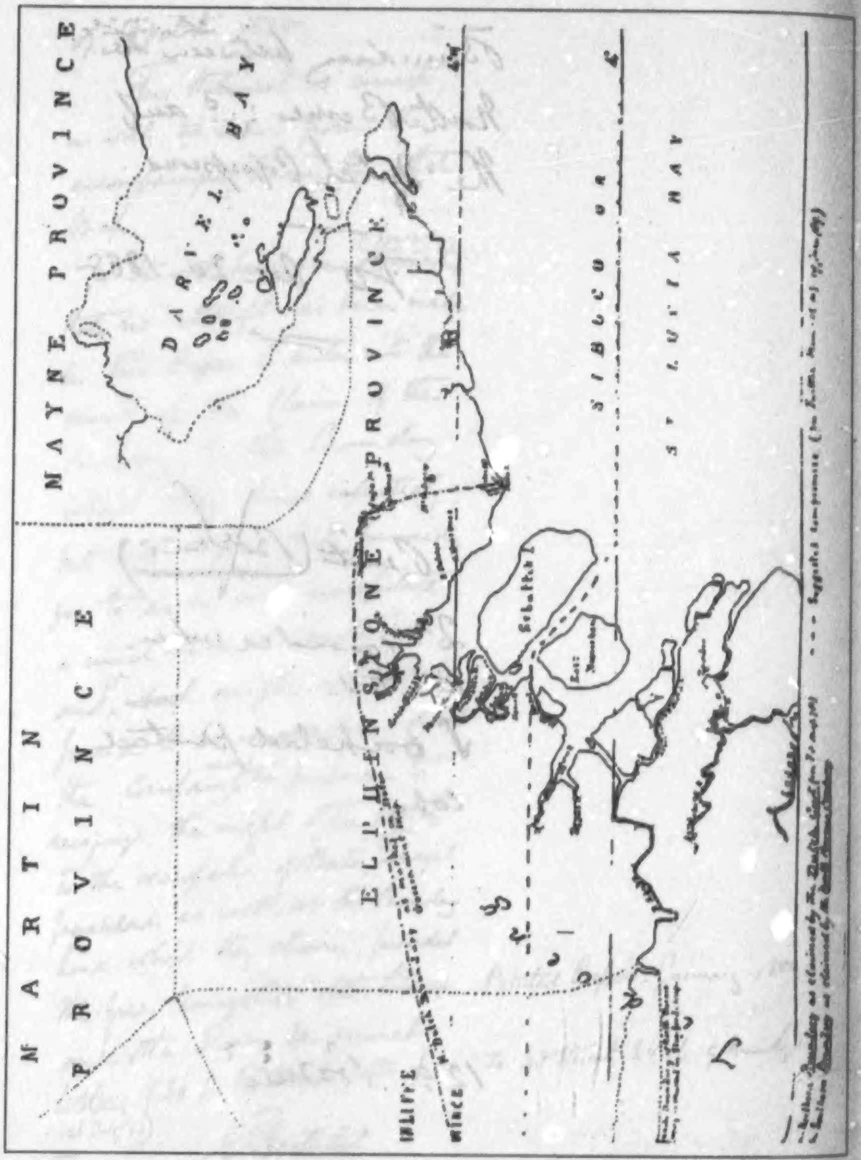
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## Annex 37

# DESPATCH FROM MR. HARTSEN TO COUNT BYLANDT DATED 22 DECEMBER 1888

## No. 2.

### *M. Hartsen to Count Bylandt.—(Communicated to the Marquis of Salisbury by Count Bylandt, January 3, 1889.)*

M. le Comte, *La Haye, le 22 Décembre*, 1888.

AINSI que j'ai déjà eu l'honneur de faire savoir à votre Excellence, l'Envoyé de Sa Majesté Britannique, Sir Horace Rumbold, est venu me communiquer le 10 Novembre dernier, qu'il était chargé par son Gouvernement de m'informer, à titre confidentiel, que des arrangements avaient été formellement conclus pour l'établissement du Protectorat de la Grande-Bretagne sur Sarawak, Brunei, et le territoire de la "British North Borneo Company."

Sans revenir sur les considérations qu'il pourrait encore se trouver en droit d'avancer quant à l'interprétation du Traité conclu avec la Grande-Bretagne en 1824, considérations développées déjà à plusieurs reprises, le Gouvernement du Roi est d'avis qu'en présence d'une promulgation éventuelle d'un Protectorat tel que celui que vient d'annoncer Sir Horace Rumbold, une délimitation des frontières séparant le territoire Néerlandais sur l'Ile de Bornéo de celui sur lequel le Gouvernement Britannique se propose d'établir son Protectorat, s'impose dans l'intérêt des deux pays.

En partant de ce principe, que le Gouvernement du Roi se flatte de voir reconnaitre comme juste et équitable par celui de Sa Majesté Britannique, il se croit en droit, avant et afin de pouvoir reconnaitre le Protectorat éventuel dont il s'agit, d'insister auprès du Gouvernement Britannique sur la nécessité qu'il y a à établir une pareille délimitation de frontières, qui devra être aussi exacte et complète que le comporte la situation d'un pays dont l'intérieur est à peu près inconnu et en partie inabordable.

Afin d'arriver à une entente complète, cette délimitation devrait s'étendre le long de toute la frontière séparant les deux territoires, savoir, de l'ouest à l'est de l'Ile de Bornéo.

La base que le Gouvernement Néerlandais désirerait faire admettre pour atteindre ce but et qui parait d'ailleurs toute indiquée, serait, en partant du point extrême à l'ouest : Tandjong Datoe, jusqu'au point extrême à l'est : Batoe Tinigat, la chaîne de montagnes formant la ligne de faîte, qui sépare les eaux ayant leur embouchure sur le territoire Néerlandais, des eaux qui se déversent sur le territoire de Sarawak, Brunei, et de la "British North Borneo Company," entre les deux points extrêmes susmentionnés.

Le Gouvernement du Roi a cru devoir prendre comme limites extrêmes à l'ouest : Tandjong Datoe, et à l'est : Batoe Tinigat, étant donné que les droits de souveraineté des Pays-Bas sur ces deux points extrêmes de l'Ile de Bornéo ne sauraient être contestés.

Quant à Tandjong Datoe, ce point n'est nullement douteux. La délimitation de la frontière entre le territoire du Sultanat de Sambas (dont Tandjong Datoe forme à l'ouest le point extrême) et celui de Sarawak a été constaté topographiquement et précisé dans le dernier Contrat Politique avec le Sultan de Sambas du 28 Août, 1877, communiqué en son temps au Gouvernement Britannique.

Il en est de même du point extrême à l'est : Batoe Tinigat.

Le Contrat Politique avec le Sultan de Boeloengan du 2 Juin, 1878, également communiqué au Gouvernement de Sa Majesté Britannique, et qui n'est du reste qu'une confirmation et un renouvellement de Contrats antérieurs, indique que le territoire de Boeloengan s'étend jusqu'au point Batoe Tinigat et est limité par le fleuve Tawau. C'est donc le point susdit à la côte orientale de Bornéo et le cours de ce fleuve, qui forment la limite entre le territoire de Boeloengan et les terrains cédés à la "British North Borneo Company," ainsi qu'il a d'ailleurs été clairement démontré par votre note du 1er Décembre, 1882, à Lord Granville, et par celle que mon prédécesseur, M. van der Does de Willebois, vous a adressée sous la date du 13 Mars, 1884, et dont vous avez donné connaissance au noble Lord.

Je n'ai pas besoin de vous faire remarquer, M. le Comte, que ces deux notes sont restées jusqu'ici sans réponses de la part du Gouvernement Britannique et que dès lors le fait que les Pays-Bas exercent depuis longtemps des droits de souveraineté sur la côte orientale de Bornéo jusqu'à Batoe Tinigat ne saurait plus être contesté par le Gouvernement Anglais. En plus, le Gouvernement de Sa Majesté Britannique n'a jamais fait le moindre obstacle ni la moindre observation quant au contenu du Contrat Politique du 2 Juin, 1878, avec le Sultan de Boeloengan. La "British North Borneo Company" a essayé le 8 Septembre, 1883, de hisser un pavillon sur la rive gauche du fleuve Siboekoe, mais l'a retiré sur les représentations du Contrôleur Néerlandais à Batoe Tinigat, où le drapeau Néerlandais n'a cessé de flotter; l'incident du 8 Septembre, 1883, a été communiqué au Gouvernement Anglais et nos droits de souveraineté sur le territoire dont il s'agit, ont été maintenus par la présence d'un employé civil, récemment transféré à peu de distance dans le territoire de Boeloengan afin de mieux surveiller et empêcher la piraterie, mais remplacé à son tour par un Chef indigène à la tête d'un poste de soldats de police.

Je vous prie, M. le Comte, de vouloir bien faire part de ces considérations et propositions au Gouvernement de Sa Majesté Britannique, et me communiquer en temps opportun l'accueil qui leur aura été fait.

En vous autorisant à donner lecture de la présente au Marquis de Salisbury, et même à en laisser copie si vous le jugez nécessaire, je saisis, &c.

(Signé) HARTSEN.

## Annex 38

## *FURTHER MEMORANDUM ON THE DISPUTED BOUNDARY BETWEEN THE NORTH BORNEO COMPANY AND THE DUTCH POSSESSIONS ON THE NORTH-EAST COAST OF THAT ISLAND*, BY SIR E. HERTSLET, DATED 9 JANUARY 1889

## *Further Memorandum on the Disputed Boundary between the North Borneo Company and the Dutch Possessions on the North-East Coast of that Island.*

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Communication from Count de Bylandt, January 2, 1889.

IN the Dutch note of the 22nd December, 1888, it is maintained that, before the actual Proclamation is issued of a British Protectorate over Sarawak, Brunei, and the British North Borneo Company's territory, it is necessary that the boundary between the Dutch possessions and the States to be protected by this country should be clearly defined.

It then declares the boundary claimed by the Netherlands to be as follows:—

"En partant du point extrême à l'ouest, Tandjong Datoe, jusqu'au point extrême à l'est, Batoe Tinigat, la chaîne de Montagnes formant la ligne de faîte qui sépare les eaux ayant leur embouchure sur le territoire Néerlandais des eaux qui se déversent le territoire de Sarawak, Brunei, et de la 'British North Borneo Company,' entre les deux points extrêmes susmentionnés."

"Spain No. 1 (1882)," Borneo and Sulu, No. 2514.

The position of these two points, *Tandjong Datoe*, on the west, and *Batoe Tinigat*, on the east, is clearly shown on the accompanying Map, which was laid before Parliament in 1882 with the "Papers relating to the Affairs of Sulu and Borneo, and to the Grant of a Charter of Incorporation to the British North Borneo Company."

With regard to Tandjong *Datoe*, no question would, I think, be likely to arise, as that is admitted to be the extreme limit of the Dutch boundary on the west coast of the Island of Borneo, separating, as it does, the Dutch possessions from the territory of Rajah of Sarawak.

But the real question in dispute is the right of the *Dutch* to claim territory on the east coast as far north as Batoe Tinigat.

"Netherlands No. 1 (1882)," Borneo and Sulu, No. 2515.

When the Papers upon this subject were laid before Parliament in 1882 a Map was attached to one of the Blue Books, upon which two dotted lines were drawn, one marking the "limit of Dutch territory 3° 20′ north latitude, referred to in the Arrêté of the Governor-General of Netherlands India, of the 28th February, 1846;" and the other, marking the extent of "territory claimed by Holland to 4° 20′, but not recognized by Great Britain."

In one of these Blue Books, a copy was also given of the Charter which had (on the 1st November, 1881) been granted to the British North Borneo Company, and in which was recited the Grants made by the Sultan of Brunei and Sulu to that Company, of territory as far south as the Sibuco, the actual words in each of the Grants being "as far as the Sibuco River."

"Spain No. 1 (1882)," No. 2514, p. 192.

The North Borneo Company maintain that, according to Malay custom, this would include both banks and the entire control of the river, although the boundary is not so coloured on Stanford's last published Map of the North Borneo Company's territory.

Sir R. Alcock, July 1, 1882.

But, as soon as the Blue Books above mentioned were issued, Count de Bylandt addressed a note to Lord Granville, in which he said Her Majesty's Government were not justified in relying solely upon the official Arrêté of the 28th February, 1846, inasmuch as the terms of that Decree had been modified: (1) by an announcement made in the "Journal Officiel Indien" in 1849; and (2) by the communication made to the Chamber by the Netherlands Minister for the Colonies on the 18th June, 1850; and in this letter it was further stated by Count de Bylandt that, before the Concessions were made to Messrs. Overbeck and Dent, the "Journal Officiel Indien," No. 31, of 1877, had already stated that within the vassal State of Boelongan, were included the territories of Tidong and the Islands of Terrakan, Neuvekan, and Sebittik, with the small islands adjacent thereto; and, moreover, that a description of the State of Boelongan was mentioned in the Contract of Vassalage concluded with the Sovereign of that territory on the 2nd June, 1878, and a copy of which was forwarded to Her Majesty's Government on the 17th January, 1880.

Count de Bylandt May 31, 1882, Print 5091, p. 1.

Contract with Sultan of Boelongan, June 2, 1878.

It should be borne in mind that Count de Bylandt made no allusion here to any earlier Contract having been concluded, but to which attention will be drawn later on.

Count de Bylandt, January 17, 1880.

In another letter dated the 12th August, 1882, Count de Bylandt announced that an inquiry made by the Dutch East Indian authorities on the spot had established in the most positive manner, that the riverain territories ("territoires riverains") of the Tawao River, belonged to the State of Boeloengan, and, consequently, to the Netherlands Indies; so that "la souveraineté territoriale Néerlandaise à la côte nord orientale de Bornéo est limitée par la chaîne de collines qui sépare les cours d'eaux, et qui commence à la mer avec le Batoe Tinigat et s'étend d'abord vers le nord, puis vers l'ouest jusqu'aux montagnes centrales de Bornéo."

This is, in effect, apparently the same boundary as that now claimed in the Dutch Minister's note of the 22nd December, 1888.

To Count de Bylandt, August 31, 1882.

But on the 31st August, 1882, Lord Granville, in replying to the above-mentioned notes from Count de Bylandt, maintained that Her Majesty's Government were justified in relying upon the official Arrêté of 1846, which had been communicated to them through the regular channel, and that they could not be expected to rely in preference upon the announcement of 1849, of which they had only then heard for the first time, or upon a communication made to the Dutch Chamber, but which was not followed, as far as Her Majesty's Government were aware, by the issue of a new Arrêté altering the preceding one.

Count de Bylandt was then informed that since the receipt of his notes, a copy of the announcement of 1849 had been procured, and that no statement was to be found in it that the Netherlands frontier had advanced beyond the previously-named limit of 3° 20′.

Lord Granville then pointed out, with reference to the Dutch claim to the State of Boeloengan being within the Netherlands India possession, that the Concessions made to Messrs. Dent and Overbeck were dated the 29th December, 1877, and 22nd January, 1878, whereas the Contract of Vassalage of Boeloengan (communicated to Her Majesty's Government on the 17th January, 1880) was dated the 2nd June, 1878, and that, consequently, being posterior to the Concessions, it could not invalidate them; and he concluded by informing Count de Bylandt that a careful and friendly examination of his arguments had convinced Her Majesty's Government that they failed to support a claim for the recognition of a frontier extending beyond 3° 20′.

The matter in dispute, therefore, now rests entirely upon the question of dates; that is to say, whether the northern boundary of the Netherlands possessions on the east coast of Borneo, at the date of the Cessions made by the Sultans of Brunei and Sulu to Messrs. Dent and Overbeck on the 29th December, 1877, and 22nd January, 1878, was limited to the Atar River, in latitude 3° 20', or whether it extended to the Tawao River and Batu Tinigat.

On reference to the annexed Map it will be seen that the former river is within the State of Boelongan, and the latter within the more northerly State of Tideong (now claimed by the Dutch), and the question to be decided is, when did the Dutch obtain actual possession of Tideong from the Sultan of Boelongan, and whether that Sultan had any right to make such a Cession?

Sir R. Alcock, December 20, 1882, Print 5091, p. 24.

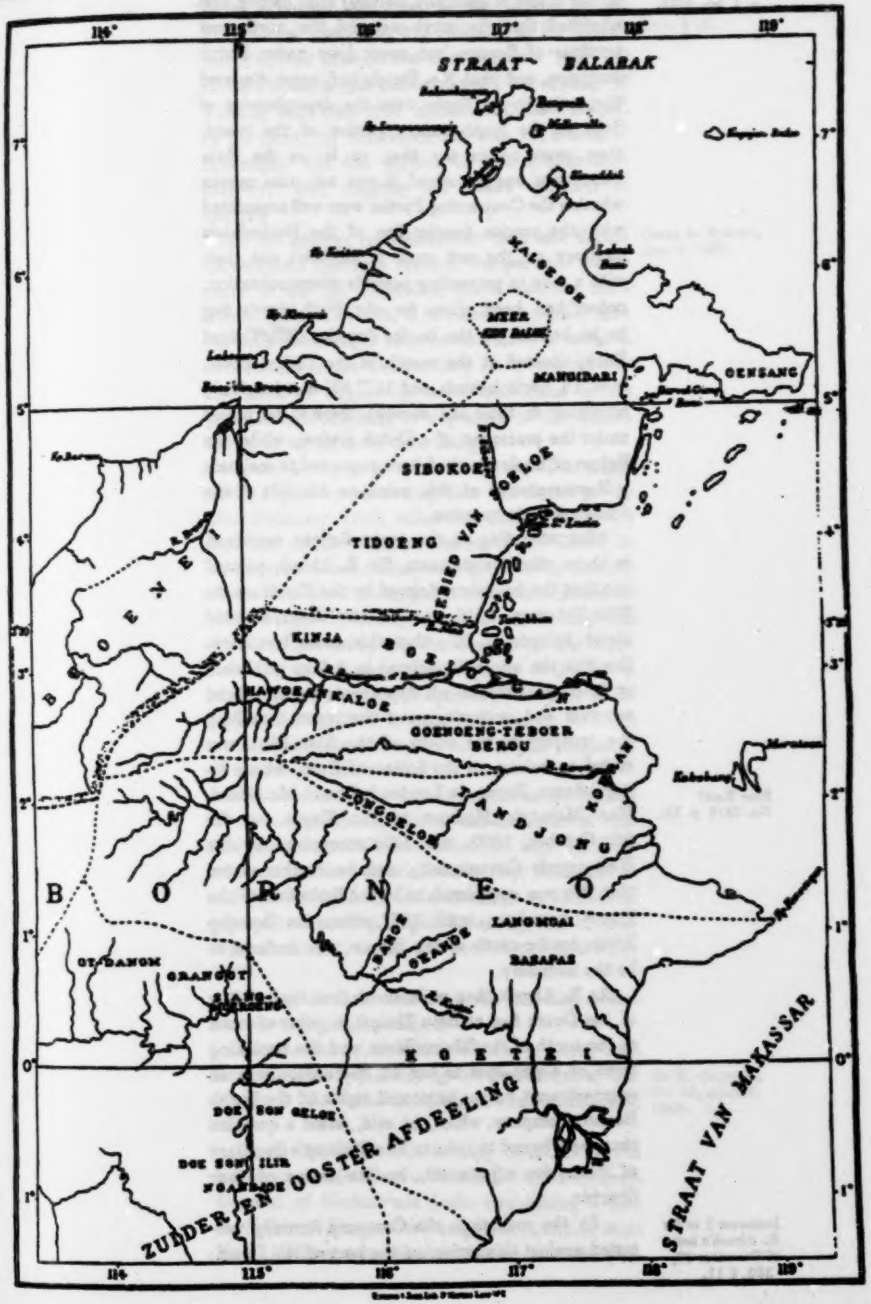
The Netherlands Government have raised the question as to the right of the Sultan of Brunei and Sulu, at the date of the Cessions made to the North Borneo Company, to cede any territory situated south and west of Batu Tinigat, which they say now forms part of the possessions of the King of the Netherlands; but it will be seen from what follows that in a Dutch Map published at Breda in 1857, and to all appearance under official sanction and authority, the territory north of the Atar River was stated to belong to the Sultan of Sulu, whose independence the Dutch Minister for Foreign Affairs (Baron de Leyden) admitted on the 9th October, 1880 (after the grant of the Sulu Concessions), was fully recognized by the Netherlands Government.

Sir R. Alcock, July 1, 1882, Print 5091, p. 2.

Sir A. Alcock, July 1, 1882.

Sir R. Alcock declares that it was not until after the limits of the Concession granted to Mr. Dent, as fixed by the Sultans of Sulu and Brunei, were known that a statement appeared in an official Colonial Report, laid before the States-General in 1877, to the effect that, to check piracy, it was intended in the next fair season to station cruizers in the waters of Berou, Bulongon, and *Sessajap*, then stated therein to be the *northernmost boundary of the Dutch possessions* on the east coast; and he has pointed out that, although the district of Sessajap is beyond the Dutch boundary-line fixed in 1846, it is still south of the Sibuco River, from which it is separated by two smaller districts. He has also drawn attention to the fact that, notwithstanding these facts, the Dutch Colonial Minister, in answer to inquiries made by the Committee of the Second Chamber in the Preliminary Report on the Netherlands Indian Budget for 1880 (and which document

NE OF DUTCH MAP REFERRED TO IN SIR E. HERTSLET'S MEM. OF JANUARY 9. 1881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MEER KINI BALOE
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"Netherlands No. 1 (1882)," p. 3, No. 2515.

was laid before Parliament with the Papers relating to the affairs of Sulu and Borneo) after having first admitted that the north-east and the north-west portions of Borneo had never been under Dutch dominion, and that the Dutch had never disputed the authority of Spain over the dependencies of Sulu in the north-eastern portion of the island, then went on to say that, as far as the Sulu Concession was concerned, it was not quite certain whether the Contracting Parties were well acquainted with the precise frontier-line of the Netherlands territory on the east coast of Borneo; and that, with a view to preventing possible misapprehension, orders had been given for the Netherlands flag to be hoisted on the border (on the Batu Tinigat Rock, situated at the mouth of the Tinigat River, in 4° 19′ north latitude, and 117° 51′ east longitude according to their last survey), there to be placed under the protection of a Dutch cruiser, whilst the Sultan of Boelongan had been requested to maintain a Representative at this point on his side of the frontier-line in question.

After attending to the contradictions contained in these official statements, Sir R. Alcock pointed out that the boundary claimed by the Dutch on the 26th February, 1846, was the Atar River, situated about latitude 3° 20′; that this same boundary-line was the one still claimed in a Map published at Breda in 1857, to all appearance under official sanction and authority; and that upon that Map the territory to the north of the Atar River was stated to belong to the Sultan of Sulu, whose independence, Baron de Lynden informed Mr. Stuart, Her Majesty's Minister at the Hague, on the 9th October, 1880, was fully recognized by the Netherlands Government; and he further stated that this was considered to be the limitation of the Dutch boundary until 1877, when the Sesajap River, to the south of the Sibuco, was declared to be the boundary.

Blue Book' No. 2515 p. 17.

Sir R. Alcock then maintained that the hoisting of the Dutch flag at Batu Tinigat, a point of coast to the north of the Sibuco River, and the stationing there of a gun-boat to bar all free access, was an encroachment on the territorial rights of the North Borneo Company, which, he said, raised a question they were bound to refer to Her Majesty's Secretary of State for adjustment, by the terms of their Charter.

Inclosure 1 to Sir R. Alcock's letter of December 20, 182, § 11.

In the meantime, the Company formally protested against this action on the part of the Dutch;

and as the Sultan of Sulu, it may be observed, has never admitted the right of the Dutch to the Provinces of Boeloengan and Tidoeng, Sir R. Alcock would appear to be correct in saying that "the contention of the Dutch authorities that the country of Tidoeng had, from time immemorial, been subject to the Sultan of Boeloengan, and that the Sultan of Boeloengan was the subject of His Netherlands Majesty," was begging the whole question in dispute.

Ditto, § 12.

As the present communication from the Dutch Government expressly refers to the previous Dutch notes of the 1st December, 1882, and the 13th March, 1884, to which, it is stated, no replies have yet been returned, it may be well now to examine those notes; to see whether they really contain any new facts in support of the Dutch claim to the possession of territory to the north of the Sibuco River, as far north as Batu Tinigat.

Count de Bylandt, June 3, 1889.

Count de Bylandt's note of the 1st December, 1882, begins by reasserting that the Arrêté of the 28th February, 1846, which it is stated (and truly) was not officially communicated by the Dutch to the British Government, was modified by another Arrêté on the 27th August, 1849, which indicated the Soengei or Kampong Abai as forming the frontier, that being the same point as was mentioned in the former Arrêté (about 3° 20′ north latitude), but that "la longitude (? latitude) a été supprimée;" but it is admitted that it was not "remplacée par la mention du 4° 20′ de longitude (? latitude) septentrionale."

The note then calls attention again to the Decree of the Netherlands India Government of the 2nd February, 1877, to which he says he drew attention in his note of the 31st May, 1882, but to which, he adds, Lord Granville made no allusion in his reply of the 31st August following; and he then repeats what he said in his note of the 31st May, 1882.

In reply to these statements the following observations may now be offered.

The Arrêté of the 28th February, *1846*, was forwarded to this Office by Sir E. Disbrowe, Her Majesty's Minister at the Hague, on the 9th April, *1849*.

Sir E. Disbrowe, No. 65, April 9, 1849.

Sir E. Disbrowe had, in May 1845, forwarded home an extract from a Decree of the Governor-General of Netherlands India establishing a new Governor in Borneo, and fixing the limits of what Sir E. Disbrowe described as "these assumed posstations;" but in his despatch of the 9th April 1849, he said that, from circumstances which had since come to his knowledge, and from hints that had been thrown out since he had officially communicated the Treaty between the British Government and the Sultan of Borneo of 1847, he was induced to believe that the limits which the Governor-General of Netherlands India included in this new Government contained a very extensive part of the interior of the island, and probably portions which were included within the frontier of Borneo proper; and he, therefore, sent home a copy of the "Staats Courant," or official Gazette (together with a translation by a sworn translator), containing the Arrêté of the 28th February, 1846, in full, which claimed as the Dutch boundary territory situated as far as "the Kampong Atas, forming the boundary of the State of *Boeloengan*, belonging to Berou, with the *Tidoeng* countries, and situated about 3° 20′ north latitude."

It will be observed that although "the Tidoeng countries" was mentioned in this Arrêté, the Dutch boundary was fixed at "about 3° 20′ north latitude," whereas the Dutch now claim territory as far north as 4° 20′.

A copy of Sir E. Disbrowe's despatch of the 9th April, 1849, together with a copy of the Arrêté of the 28th February, 1846, was sent to Sir James Brooke with instructions to report on the limits therein set forth; and he reported on the 3rd October, 1849, that the "geography of Borneo was so imperfect, and the boundary-lines of petty States so irregular, so vague, and of so little consequence to the native Rulers, that it could scarcely be maintained by the Netherlands Government, as stated in an extract from the Dutch 'Register of Resolutions,'" that "the general knowledge of the geographical and political affairs of Borneo afforded an opportunity of fixing the circumscription of a territorial division of the island."

No objection was, however, offered by the British Government to the extension of the Dutch territory in Borneo on the north-east coast as far as 3° 20′, but nothing beyond that to the north has ever been recognized by this country as belonging to Holland.

With reference to the "Resolution" of August 1849, in which Count de Bylandt says the frontier at 3° 20′ as established in 1846, was "suppressed," it may be mentioned that that document was never communicated officially to Her Majesty's Government, and that when a copy of it was obtained from the British Museum in 1882, it was found that it was not stated therein that the Dutch frontier was advanced beyond 3° 20′, although it spoke in vague terms of "the entire river district of Berou;" and, so far from Her Majesty's Government having had any reason to suppose that any claim was at that time set up to an extension of territory beyond 3° 20′, Sir E. Disbrowe, in that same month, August 1849, forwarded to the Foreign Office a Map of a part of the Island of Borneo, published under the direction of Lieutenant Melville Carnebee, of the Royal Netherlands Navy, "showing the limits which the Netherlands Government claimed in that island, in virtue of the Proclamation of the Governor-General of Netherlands India, M. de Rochusen," or, in other words, in virtue of the Arrêté of 28th February, 1846; upon that Map, the Atas River, in latitude 3° 20′, is marked as the limit of the Dutch possession at that time (1849), and Sir E. Disbrowe assured Lord Palmerston that, although it was not an original boundary Map, and not perfectly official, it indicated correctly the Netherlands pretensions.

Count de Bylandt then proceeds to state, in his note of the 1st December, 1882, that the Decree of the Netherland India Government "of the *2nd February, 1877*," declaring Boelongan and Tidoeng to be Dutch territory, was issued *before* the promulgation of the Dent and Overbeck Concession, and he accordingly maintains, and he lays stress on the fact, that if the principle of dates is to be invoked, it is entirely in favour of the Dutch; but he admits that the "Contract of Vassalage" on the part of Sultan of Boelongan was not signed until the 2nd June, 1878,* so that the Netherlands India Government were apparently not justified in issuing a Decree declaring Boelongan and Tidoeng to be Dutch territory before this Contract of Vassalage had been signed (although allusion has since been made by Count de Bylandt to an Agreement having been signed with the Sultan of Boelongan in 1850, to which attention will be drawn later on); and as the Dent and Overbeck Concessions were signed on the 29th December, 1877, and 22nd January, 1878, respectively, whereas the Boeloengan Contract of Vassalage was not signed until the 2nd June, 1878, the principle of dates, if invoked, is entirely *against*, and not in favour of the Dutch claim.

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* The date of this Contract was given by Count de Bylandt, in his note of the 1st December, 1882, as the 22nd *January, 1878*, but the Dutch Minister for Foreign Affairs (M. Van der Does de Willebois) in his despatch to Count de Bylandt of the 13th March, 1884 (a copy of which was communicated to Earl Granville on the 17th of that month) pointed out that this was an error, and that the real date of the Contract was the 2nd June, 1878.

Moreover, even with regard to this Contract of the 2nd June, 1878, Her Majesty's Government were not made aware of its existence until the 17th January, *1880*, when a copy of it was officially communicated by Count de Bylandt to the Marquis of Salisbury.

Count de Bylandt, May 31, 1882.

It may here be mentioned that it is stated in a Memorandum respecting the boundary between the Netherlands and Soloh possessions on the north-east coast of Borneo, which was given to Earl Granville by Count de Bylandt on the 6th April, 1883, that an Agreement similar to that of the 2nd June, 1878, was made between the Netherlands India Government and the Sultan of Boeloengan on the 12th November, 1850; but that it was not communicated to England, because no such communication was required under the Treaty of London of 1824, as the Contract was only concerned with the establishment of rights anterior to that Treaty: but as the so-called "new" Contract with Boeloengan, of the 2nd June, 1878, was officially communicated to the British Government, it is difficult to follow the argument, or to understand what the necessity was which called for the conclusion of a new Contract containing, apparently, the same stipulations, and why the Agreement of 1850 was not mentioned when the Contract of 1878 was officially communicated.

Print No. 5091, p. 20.

As it is pointed out by Count de Bylandt that the boundaries of the Kingdom of Boeloengan and of the islands belonging to it are described in the Contract of the 2nd June, 1878, it may be stated here how the boundary is therein defined. It says:—

"The boundaries of the Kingdom of Boeloengan are:—

"Next *Goenoeng Taboer*: from the sea-strand; inland, the River Karangtiegan, from its mouth to its source; then the Batoe Beoekkien and the Mountain Palpakh;

"Next the *Solok's* [? Sulu] possessions; on sea the angle called Batoe Tinigat, and then the River Tawau.

"The following islands belong to Boeloengan, viz., Terrakian Nanoekan, and Jebittikh, with the islands belonging thereto."

The note from Count de Bylandt of the 1st December, 1882, concluded by asking which was the River Sibuco, which was really intended to be referred to in the Dent and Overbeck Concessions, and as a Memorandum on the subject was inclosed which commenced with these words: "Dans le nord-est de Borneo plusieurs rivières qui du nord débouchent dans la Baie de Sainte-Lucie, paraissent se désigner, sous le nom de 'Siboetoe.'" It was not thought advisable by Her Majesty's Government (as stated in my Memorandum of the 20th December, 1888) to continue a hopeless discussion, in the absence of more precise official information on the subject than was then forthcoming, although from more recent observations there would now appear to be no dispute as to the actual position of the real Sibuco River. Sir R. Alcock, December 20, 1887.

But by way of replying to Count de Bylandt's note of the 1st December, 1882, alternative proposals were made to settle the boundary dispute in a satisfactory and friendly manner, but these several proposals were declined by the Dutch Government.

It is not quite accurate, therefore, to say (as the Dutch note of the 22nd December last does) that their note of the 1st December, 1882, has remained up to this day unanswered ("restée jusqu'ici sans réponse").

It is true that the arguments put forward in Count de Bylandt's note of the 1st December, 1882, have not been answered *seriatim*; but as no new facts were produced, and the arguments put forward in that note had already been answered briefly in Lord Granville's note to Count de Bylandt of the 31st August, 1882, there was really no necessity for replying to it when no good was likely to result from the discussion. Confidential Print, p. 10.

It may now be well to examine the Dutch note of the 13th March, 1884, a copy of which was communicated to Lord Granville on the 17th of the same month, and to which it is true no reply has yet been returned.

[The reason why it was answered is explained in my Memorandum of the 20th December, 1888.]

The note begins by calling attention to Count de Bylandt's note of the 1st December, 1882, which, it is said, proves the incontestible right of the Dutch to consider Bata Tinigat as their northern boundary, including within their terri-

tory, "par conséquent, le fleuve qui, sous le nom de Siboeko, se jette dans la mer au sud-ouest de Batoe Tinigat, traverse ce territoire."

It then alludes to the proposals made by Her Majesty's Government for settling the boundary questions by an inquiry on the spot or by arbitration, as well as to the offer made by the North Borneo Company to accept the 4th degree as a boundary-line by way of compromise (as also already explained in my Memorandum of the 20th December, 1888); but without bringing forward any further documents in support of the Dutch claim, it repeats over and over again that the Dutch Government have shown that the territory in dispute belongs to them and that Her Majesty's Government have never replied to the arguments put forward by the Dutch Government, and especially to those contained in Count de Bylandt's note of the 1st December, 1882.

It would seem to be advisable, therefore, now to forward a reply to that note based upon the facts above stated.

But before leaving this subject it may be well to call attention to the great importance of not allowing the Dutch to enjoy the sole right of navigating the Sibuco and the numerous other rivers which flow from the interior of the Island of Borneo into the sea, in the Sibuco or Sainte-Lucie Bay, to the south of Batu Tinigat, as to admit such a claim might have the effect of depriving the Company of a large portion of their possessions, as the actual course of the Sibuco is not known, and it might be found to rise considerably to the north of Batu Tinigat, and to flow through a vast extent of territory in the interior belonging to the North Borneo Company.

The question of the navigation of these rivers, then, is really the only important point in dispute, and, as neither the Dutch nor the North Borneo Company are likely to surrender, willingly, the rights which they maintain they possess by cession from native Chiefs to the Sibuco and other rivers, I think a solution of the difficulty might be found by drawing the attention of the Dutch Government to the concluding paragraph of Count de Bylandt's letter of the 1st December, 1882, and which concludes with these words:—

"De son côté le Gouvernement Néerlandais se voit dans l'impossibilité de renoncer au territoire ressortant depuis nombres d'années de sa souveraineté. Pour préserver de toute atteinte, comme elle y est obligé, les droits des Princes indigènes, ses vassaux, la Néerlande a un intérêt très réel à la conservation de Batoe Tinagat comme frontière. Par contre, quel intérêt la 'British North Borneo Company' peut-elle avoir à la bande de terrain qui est l'objet de la controverse, et quel détriment éprouverait-elle à ne pas l'acquérir ? Serait-ce pour prévenir des entraves qui pourraient être apportées au commerce et à la navigation sur l'Ile de Bornéo ? Mais rien n'est plus loin des intentions du Gouvernement du Roi que d'opposer à ces intérêts la moindre difficulté. Tout récemment j'ai eu moi-même occasion d'en donner au *Foreign Office* l'assurance formelle, que mon Gouvernement a entièrement approuvé, et me charge de réitérer expressément à votre Excellence dans l'affaire qui nous occupe actuellement."

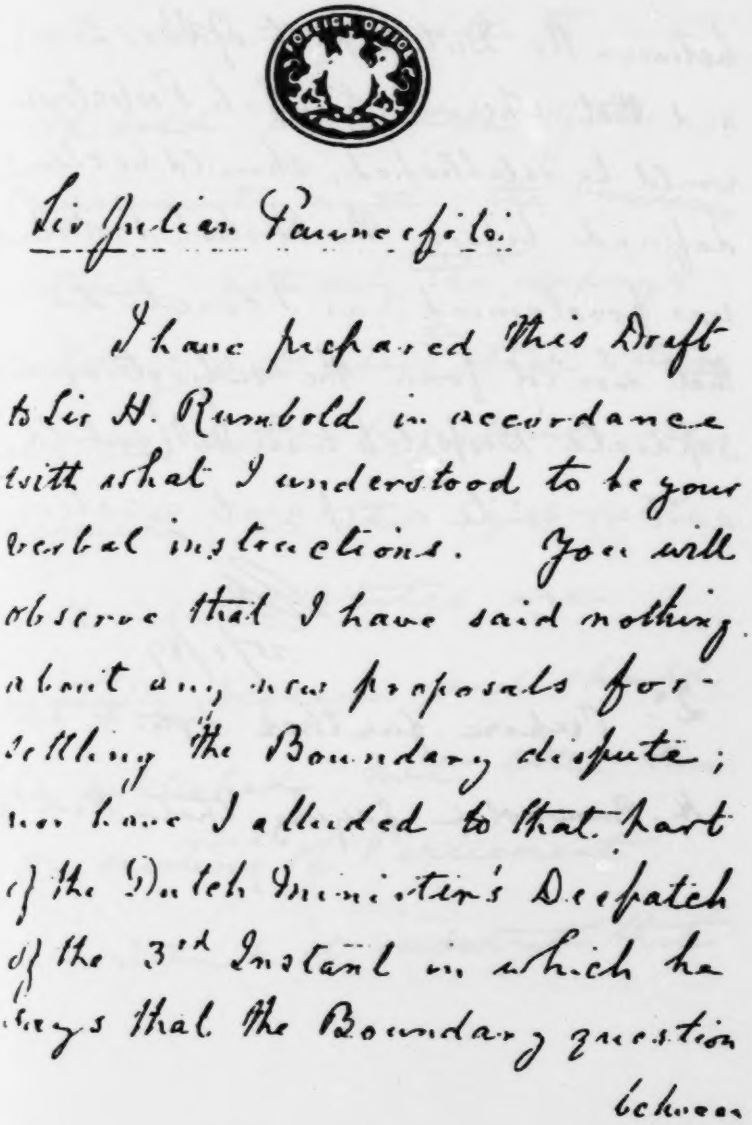
The Dutch Government, in their communication of the 3rd instant, claim as their boundary in the interior a chain of mountains and the course of rivers, the exact position of which is totally unknown ; and if they could, therefore, be induced to accept as their boundary the line recently drawn on their own official Map, a tracing from which accompanied my Memorandum of the 26th July, 1886, and would enter into an engagement to declare the River Sibuco, as well as all the other rivers to the south of Batoe Tinigat, to be free and open to the whole world, it would be a satisfactory settlement of this long-vexed question.

(Signed) E. HERTSLET.

*Foreign Office,*
*January* 9, 1889.

## Annex 39

## MEMORANDUM FROM SIR E. HERTSLET TO SIR J. PAUNCEFOTE
## DATED 25 JANUARY 1889



FOREIGN OFFICE

Sir Julian Pauncefote:

I have prepared this Draft to Sir H. Rumbold in accordance with what I understood to be your verbal instructions. You will observe that I have said nothing about any new proposals for settling the Boundary dispute; nor have I alluded to that part of the Dutch Minister's Despatch of the 3rd Instant in which he says that the Boundary question

between

between the Dutch part of Borneo and that where an English Protectorate would be established, should be clearly defined before the British Protectorate was proclaimed, as I conclude that would form the subject of a separate Despatch to Sir H. Rumbold, as it is quite a separate question.

E.H.
25/1/89.

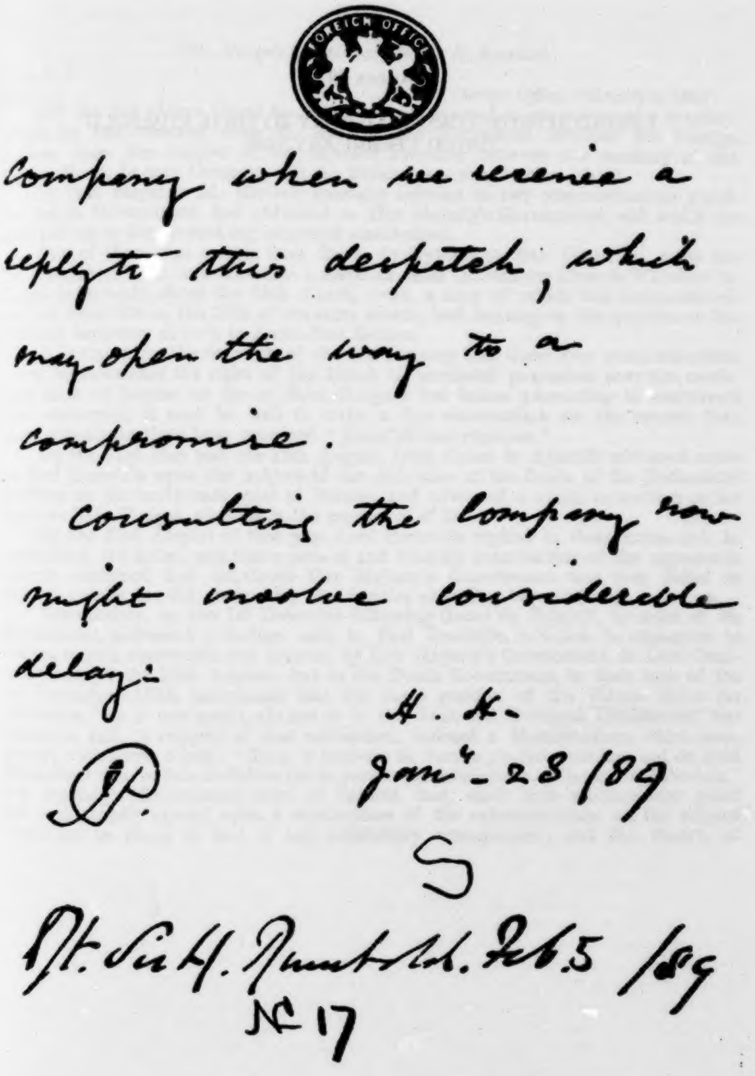
2d. Prepare further Dft: to Sir H. Rumbold saying that H.M.'s

Govt. cannot consent to with-hold publication of the 3 agreements until the boundaries between, not only the Company's territory but also the other 2 States, and the Dutch Possessions are defined; as the agreements with all 3 states are actually signed and should be published not later than the meeting of Parliament.

I think it important that

there should be no unnecessary delay in sending this despt., when approved, to Sir H. Rumbold, & that he should commte. it to the Dutch Govt. before the 3 agreements are published. They have been laid in dummy and ought I presume to be distributed by the time Parlt. meets.

Sir E. Hertslet and I submit that it will be sufficient to consult the



FOREIGN OFFICE

Company when we receive a reply to this despatch, which may open the way to a compromise.

Consulting the Company now might involve considerable delay:

H. H.

P. Jan^y 28 /89

S

Dt. Sir H. Rumbold. Feb. 5 /89

No 17

## Annex 40

# DESPATCH FROM LORD SALISBURY TO SIR H. RUMBOLD DATED 5 FEBRUARY 1889

## No. 21.

*The Marquis of Salisbury to Sir H. Rumbold.*

(No. 17.)

Sir, *Foreign Office, February* 5, 1889.

ON the 3rd ultimo Count de Bylandt communicated to me a copy of a despatch which he had received from M. Hartsen, the Netherland Minister for Foreign Affairs, upon the subject of the disputed boundary between the territory of the British North Borneo Company and the Dutch possessions in that island.

In that despatch M. Hartsen specially referred to two communications which the Dutch Government had addressed to Her Majesty's Government, and which he said had up to the present day remained unanswered.

One of these was a note from Count de Bylandt to Earl Granville, dated the 1st November, 1882, and the other a despatch from M. van der Does de Willebois to Count de Bylandt, dated the 13th March, 1884, a copy of which was communicated to Earl Granville on the 17th of the same month, both bearing on the question of the existing boundary dispute in North-East Borneo.

It is stated in the despatch of the 3rd January that these two communications prove incontestably the right of the Dutch to territorial possession over the north-east coast of Borneo as far as Batu Tinigat; but before proceeding to controvert that statement, it may be well to make a few observations on the remark that these communications have remained "jusqu'ici sans réponses."

On the 31st May and the 12th August, 1882, Count de Bylandt addressed notes to Earl Granville upon the subject of the definition of the limits of the Netherland territory on the north-east coast of Borneo, and advanced a claim to territory as far north as Batu Tinigat, situated in the parallel of 4° 20′.

On the 31st August of that year Lord Granville replied to these notes, and, in concluding the latter, said that a careful and friendly examination of the arguments therein contained had convinced Her Majesty's Government that they failed to support a claim for the recognition of a frontier extending beyond 3° 20′.

Nevertheless, on the 1st December following Count de Bylandt, by order of his Government, addressed a further note to Earl Granville, in which he attempted to combat certain statements put forward by Her Majesty's Government in Lord Granville's note of the 18th August; but as the Dutch Government, in their note of the 1st December, 1882, maintained that the exact position of the Sibuco River (or "Siboehoe," as it was spelt), alluded to in the Dent and Overbeck Concessions, was unknown, and, in support of that contention, inclosed a Memorandum, which commenced with these words: "Dans le nord-est de Bornéo plusieurs rivières qui, du nord débouchent dans la Baie de Sainte-Lucie, paraissent se désigner sous le nom de Siboehoe," Her Majesty's Government were of opinion that, until that all-important point was satisfactorily agreed upon, a continuance of the correspondence on the subject would not be likely to lead to any satisfactory arrangement; and Mr. Stuart, at that time Her Majesty's Minister at the Hague, was accordingly instructed to suggest to the Netherland Government the nomination of British and Netherland Commissioners, with instructions to examine into the question on the spot, and to report the result to their respective Governments, and he was told, should this course not result in an agreement being come to, to suggest that a recourse should be had to arbitration.

This proposal was made to the Netherland Government on the 13th January, 1883; but no reply was returned to it until the 9th March following, and, in the meantime, news had reached this country that the Netherland authorities had hoisted the Dutch flag at Batu Tinigat (about 4° 20′ north latitude), a point on the coast north of the Sibuco River claimed by the Company.

A proposal was then made to the Dutch Government, as a compromise of all conflicting claims, that the 4th degree of north latitude should be accepted as the limit to be recognised on both sides, irrespective of the more or less erratic course of any river, provided that it was also agreed that the navigation of any river, the entrance to which might be situated to the north of that degree, should be left open to the ships of all nations.

By this arrangement, whichever river which emptied itself into the St. Lucia Bay above this parallel of latitude might eventually prove to be the real Sibuco, it would have been thrown open to the merchant-ships of all nations; but the Dutch Government declined these proposals also.

Thus it will be seen that after the receipt of Count de Bylandt's note of the 1st December, 1882, various proposals for settling the disputed boundary were made by Her Majesty's Government. These proposals were, in the opinion of Her Majesty's Government, the only possible means of arriving at an amicable settlement of the question in the absence of that positive information respecting the position of the Sibuco River which the Netherland Government themselves declared to be necessary, but not at that time to be available. Those proposals were all declined by the Netherland Government, and it cannot therefore be justly maintained that Count de Bylandt's note of the 1st December, 1882, has remained unanswered.

The despatch from the Netherland Minister for Foreign Affairs of the 22nd December last further states that the Dutch communication of March 1884 has also remained unanswered; but, in reply to that statement, you will observe from a perusal of that note (a copy of which I inclose) that whilst it is reasserted that Count de Bylandt's note of the 1st December, 1882, proves the clear and incontestable right of the Dutch to consider Batu Tinigat, situated in about 4° 20′ north latitude, as their boundary, and reiterates the reasons why the various proposals made by Her Majesty's Government for a settlement of the boundary dispute were not considered acceptable by the Dutch Government, no new facts or documents of any kind were produced in support of the Dutch claim; and as the despatch from the Dutch Minister for Foreign Affairs of the 13th March, 1884, was written in reply to a despatch from Earl Granville to Count de Bylandt, dated the 24th January of that year, in which proposals were renewed for a settlement of the question, either by the appointment of a Joint Commission, or by arbitration, with a view to avoid a more serious misunderstanding, or possibly a collision on the spot, which was then imminent, it cannot be said to have really required any further rejoinder, as no possible good could have been expected to result from the continuance of an argumentative discussion, based on information which was admitted by the Dutch Government, at the time they wrote their despatch of the 1st December, 1882, to be imperfect.

But as the Dutch Government are still anxious to receive a reply to their communications of the 1st December, 1882, and the 14th March, 1884, I will now proceed to notice the statements made therein, and to offer certain remarks upon them.

You are aware that the claims of the British North Borneo Company to territory on the north-east coast of that island, "as far as the Sibuco River," is founded on the actual wording of grants made to them by the Sultans of Brunei and Sulu on the 29th December, 1877, and the 22nd January, 1878, respectively, and that those several grants were set forth in the Royal Charter granted to that Company on the 1st November, 1881.

But the Netherland Government maintained (1) that territory as far north as Batu Tinigat, situated in about 4° 20′ north latitude, was within territory belonging to the Sultan of Tidoeng, who was said to be a dependant of the Sultan of Boelongan, and which Sultan, it was said, had ceded his possessions to the Netherlands before the issue of the above-mentioned grant to the British North Borneo Company; and (2) that the Sultan of Sulu had no right to make the grants which he did to the

British North Borneo Company; but it will be seen from what follows how inaccurate both these statements are.

In the first place, I may remind you that, at the time when the above-mentioned grants were made to Messrs. Dent and Overbeck, the claim which the Netherland Government put forward to territory on the north-east coast of Borneo did not extend any further north than the Kampong-Atas River, situated in north latitude 3° 20′, that being the point referred to in the "Arrêté" of the Governor-General of Netherland India of the 28th February, 1846, which was inserted in the "Staats Courant," or official Gazette of the Netherlands, and a copy of it was (in 1849) officially communicated to Her Majesty's Government by Her Majesty's Minister at the Hague. 28 Feb /46

That "Arrêté" claimed as the Dutch boundary territory situated as far as "the Kampong-Atas, forming the *boundary of the State of Boelongan, belonging to Berou, with the Tidoeng countries, and situated about 3° 20′ north latitude.*"

But notwithstanding this distinct admission that the boundary of the State of Boelongan and the Tidoeng countries extended no further than 3° 20′, the Netherland Government now argue that Her Majesty's Government were not justified in relying solely on this "Arrêté," inasmuch as they state it was modified by a subsequent "Arrêté" dated the 27th August, 1849, and that a communication of the fact was made to the Chamber by the Netherland Minister for the Colonies on the 18th June, 1850. 27 Aug

But the "Arrêté" of the 27th August, 1849, so far from disturbing this state of things, again indicated the Kampong-Atas River as forming the Netherland frontier, although the latitude was suppressed; and, in proof that no claim was at that time set up by the Dutch to an extension of territory beyond 3° 20′, it may be mentioned that Sir E Disbrowe, in that same month, August 1849, forwarded to the Foreign Office a Map of a part of the Island of Borneo, published under the direction of Lieutenant Melville Carnebec, of the Royal Netherland Navy," showing the limits which the Netherland Government claimed in that island, in virtue of the Proclamation of the Governor-General of Netherland India, M. de Rochussen;" or, in other words, in virtue of the "Arrêté" of the 28th February, 1846; and upon that Map, the Atas River, in latitude 3° 20′, is marked as the limit of the Dutch possession at that time (1849), and Sir E. Disbrowe assured Lord Palmerston that, if not perfectly official, the Map indicated correctly the Netherland pretensions. 1849

But evidence can be produced to show that even many years later than this, that is to say, in 1857, the Netherlands claimed no territory to the north of 3° 20′ as belonging to them, for upon a Map published at Breda in that year, having, to all appearance, been issued under official sanction and authority, the Dutch boundary is marked as being limited by the Atas River in 3° 20′. 1857

In 1877, however, on the Netherland Government becoming aware that certain concessions had been made by the Sultans of Sulu and Brunei to Mr. Dent, the States-General were informed that, with a view to check piracy, it was *intended* in the next fair season to station cruizers in the waters of Berou, Boelongan, and *Sessajap*, which was *declared to be the northernmost boundary of the Dutch possessions on the east coast.* 1877

Now, although Sessajap is to the north of the Atas River, it is still south of the Sibuco River, from which it is separated by two smaller districts.

The question of dates now becomes of much importance.

Count de Bylandt stated in his notes of the 31st May and 1st December, 1892, that on the 2nd February, 1877, a Decree was issued by the Netherland Indian Government declaring Boelongan and Tidoeng to be Dutch territory, and that this was before the promulgation of the Dent and Overbeck Concessions (of the 29th December, 1877, and 22nd January, 1878); and the Netherland Minister for Foreign Affairs, in his despatch of the 3rd of the present month, lays stress on this fact, and adds that no allusion has yet been made to it in any communications which his Government have received from Her Majesty's Government.

But the Netherland Government admit that the "Contract of Vassalage" on the part of the Sultan of Boelongan, and in which the boundaries of the Kingdom of Boelongan were described as including Batu Tinigat and the River Tawao, was not signed until the 2nd June, 1878, so that this Act of Vassalage was signed *after*, and *not before*, the grant of the Concessions above mentioned. 1878

The Contract of the 2nd June, 1878, was apparently approved and ratified by the Governor-General of Netherland India on the 1st September, 1878, but it was not officially communicated to Her Majesty's Government until the 17th January, 1880. 1880

It is stated in the Netherland Minister's communication of the 3rd January that the Contract made with Boelongan on the 2nd June, 1878, was merely a confirmatory renewal of former Contracts, which is a repetition, in another form, of a similar argument made in a Memorandum communicated by Count de Bylandt to Earl Granville on the 6th April, 1883, and in which it was said that an Agreement had been made with Boelongan on the 12th November, 1850, by whic[illegible]e Sultan recognized the Netherland sovereignty, and after referring to his subm[illegible]on by the Act of the 27th September, 1834, indicated "as boundary with the Solok possessions on the sea, the angle called Batoe Tinigat, and further, the River Tauwan," including certain islands which were specially named; but it is admitted that no copy of this Contract was communicated to Her Majesty's Government because, it was said, the Dutch rights over Beron, acquired by cession, were of an earlier date than 1824, and also because it was conceived that no such communication was required, as the Contract was only concerned with the establishment of rights anterior to the Treaty of 1824; but whether or not this can be accepted as a satisfactory explanation of the reason why the Contract of Boelongan said to have been concluded in 1850 was not communicated to Her Majesty's Government, whilst the Contract with the same Sultan made in 1877 was so communicated, this important fact still remains, that in 1857 (seven years after this Contract is said to have been entered into) the Map already alluded to was published at Breda, upon which the Dutch boundary was marked as being limited to the Atas River in 3° 20′; and as no other Contract is quoted as having been concluded with the Sultan of Boelongan between 1850 and the 2nd June, 1878, the Netherland Indian Government could not have been justified in issuing a Decree on the 2nd February, 1877, declaring Boelongan and Tidoeng to be Dutch territory, when the Contract of Vassalage with Boelongan was not signed until the 2nd June, 1878, and after the Dent and Overbeck Concessions had been issued.

1883 12 Novr 1850 27 Sept 1834 1824 1857 2 Feb 2 June

Count de Bylandt, in his Memorandum of the 6th April, 1883, alludes to the Contract of the 2nd June, 1878, as the "new" Contract, but it was not so called in the Contract itself, nor was any allusion made therein to the signature of any earlier Contract.

It will be seen from this that the encroachments were made by the Dutch *after* the issue of the Dent and Overbeck Concessions, and that these encroachments comprise territory which the Netherlands had previously admitted did not belong to them, but to the Sultan of Sulu.

I will now pass on to the second statement made by the Netherland Government, namely, that the Sultan of Sulu had no right to make the grants which he did to Mr. Dent and others.

The Dutch authorities maintain that the country of Tidoeng has, from time immemorial, been subject to the Sultan of Boelongan, and that, as the Sultan of Boelongan is a subject of the King of the Netherlands, Tidoeng also belongs to the Netherlands; but this is in direct conflict with the statement made in the Dutch Memorandum of the 6th April, 1883, in which it is said, "until 1849 the opinion was entertained that the Tidoeng districts situated to the north of Boelongan were independent." Moreover, in the Map already alluded to,* which was published at Breda in 1857, and a photograph of a portion of which is inclosed for your information, Tidoeng is distinctly marked as being separated from Boelongan, as being Soeloe territory, and as lying outside the limits of the Netherland possessions in Borneo.

Tidoeng 1849 1883

Moreover, this same Map shows that the territory to the north of the Atas River in 3° 20′, including the Sibuco River, Batu Tinigat, the River Tawao—in fact, all the territory now in dispute—belonged to the Sultan of Sulu (Soeloe), who had, therefore, clearly a right to make a concession of it, "as far as the Sibuco River," to the British North Borneo Company; and as the Netherland Government admitted, so recently as the 9th October, 1880, that the independence of the Sultan of Sulu was fully recognized by the Netherland Government, their action in hoisting the Dutch flag at Batu Tinigat, and in stationing a gun-boat there to bar all free access to the Sibuco and other rivers, was manifestly an encroachment on the territorial rights of the North Borneo Company.

1880

The Netherland Minister for Foreign Affairs asserts, in his despatch of the 3rd January, that Her Majesty's Government have never raised any obstacle to or remonstrance against the Contract with Boelongan of the 2nd June, 1878, and that, since they removed the flag of the British North Borneo Company, which had been hoisted at Batu Tinigat on the 8th September, 1883, their rights of sovereignty have been maintained there; but he entirely ignores the fact that ever since the issue of the grants to Messrs. Dent and Overbeck by the Sultans of Brunei and Sulu, negotiations

Boelongan 2 June 78 8/10/83

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* Map. India 34. Drawer.

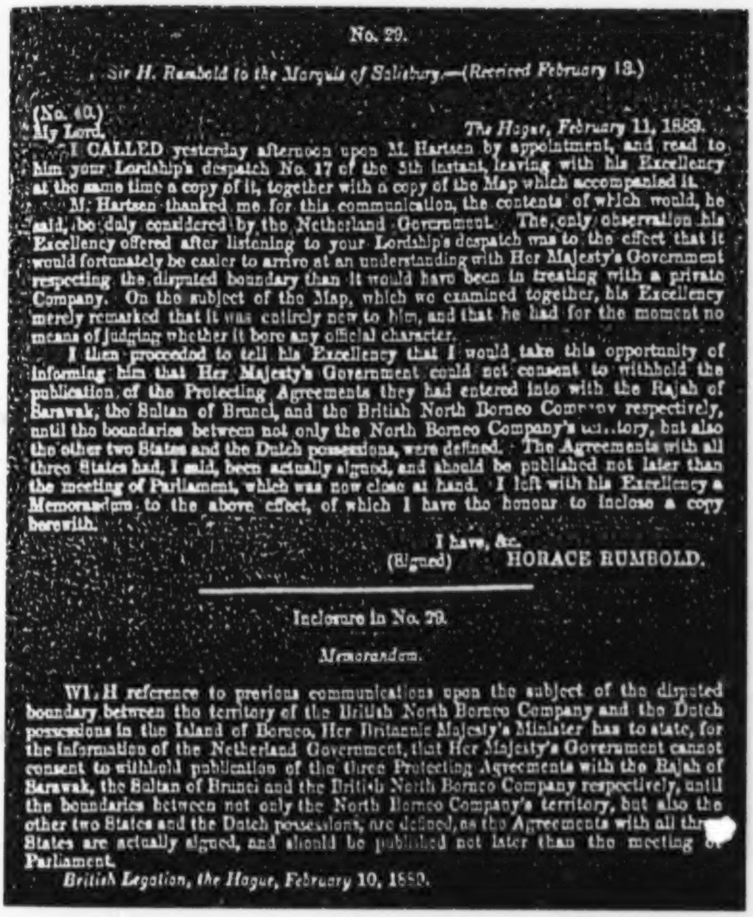
have been and are still pending for a settlement of the boundary dispute in an amicable manner, as well as the fact that the Resident of the British North Borneo Company addressed a written protest at the time to the Captain of the Netherland iron-clad "Atjeh" against the removal of the Company's flag from Batu Tinigat.

You are authorised to read this despatch to the Netherland Minister for Foreign Affairs, and to leave with him a copy of it.

I am, &c
(Signed) SALISBURY.

## Annex 41

# DESPATCH FROM SIR H. RUMBOLD TO LORD SALISBURY
# DATED 11 FEBRUARY 1889
# ENCLOSING MEMORANDUM BY BRITISH LEGATION, THE HAGUE,
# DATED 10 FEBRUARY 1889



No. 29.

*Sir H. Rumbold to the Marquis of Salisbury.—(Received February 13.)*

(No. 40.)

My Lord,

*The Hague, February* 11, 1889.

I CALLED yesterday afternoon upon M. Hartsen by appointment, and read to him your Lordship's despatch No. 17 of the 5th instant, leaving with his Excellency at the same time a copy of it, together with a copy of the Map which accompanied it.

M. Hartsen thanked me for this communication, the contents of which would, he said, be duly considered by the Netherland Government. The only observation his Excellency offered after listening to your Lordship's despatch was to the effect that it would fortunately be easier to arrive at an understanding with Her Majesty's Government respecting the disputed boundary than it would have been in treating with a private Company. On the subject of the Map, which we examined together, his Excellency merely remarked that it was entirely new to him, and that he had for the moment no means of judging whether it bore any official character.

I then proceeded to tell his Excellency that I would take this opportunity of informing him that Her Majesty's Government could not consent to withhold the publication of the Protecting Agreements they had entered into with the Rajah of Sarawak, the Sultan of Brunei, and the British North Borneo Company respectively, until the boundaries between not only the North Borneo Company's territory, but also the other two States and the Dutch possessions, were defined. The Agreements with all three States had, I said, been actually signed, and should be published not later than the meeting of Parliament, which was now close at hand. I left with his Excellency a Memorandum to the above effect, of which I have the honour to inclose a copy herewith.

I have, &c.

(Signed) HORACE RUMBOLD.

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Inclosure in No. 29.

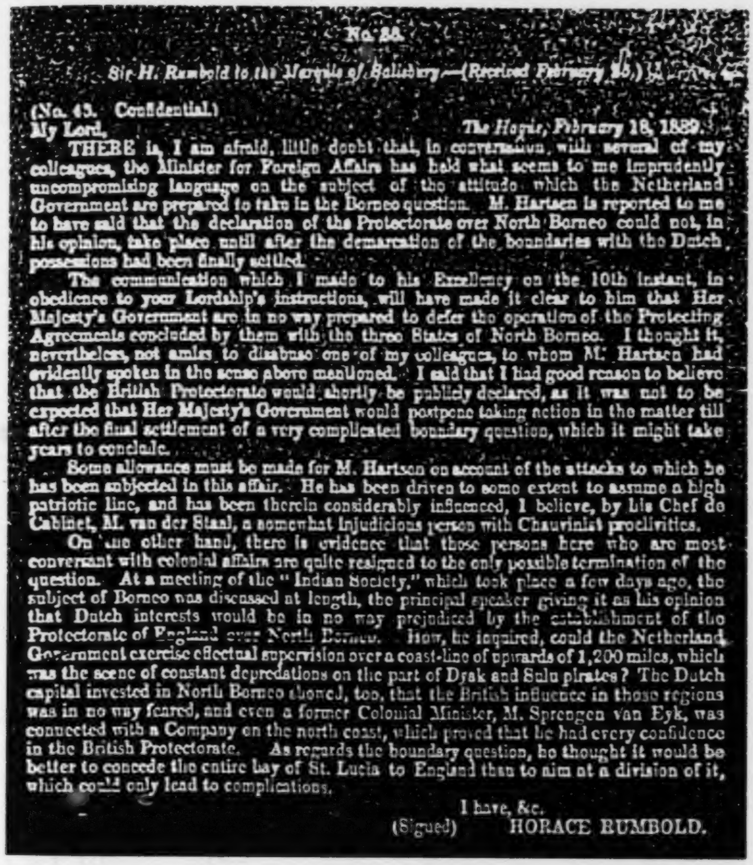
*Memorandum.*

WITH reference to previous communications upon the subject of the disputed boundary between the territory of the British North Borneo Company and the Dutch possessions in the Island of Borneo, Her Britannic Majesty's Minister has to state, for the information of the Netherland Government, that Her Majesty's Government cannot consent to withhold publication of the three Protecting Agreements with the Rajah of Sarawak, the Sultan of Brunei and the British North Borneo Company respectively, until the boundaries between not only the North Borneo Company's territory, but also the other two States and the Dutch possessions, are defined, as the Agreements with all thr[illegible] States are actually signed, and should be published not later than the meeting of Parliament.

*British Legation, the Hague, February* 10, 1889.

## Annex 42

# DESPATCH FROM SIR H. RUMBOLD TO LORD SALISBURY DATED 18 FEBRUARY 1889



### No. 28.

*Sir H. Rumbold to the Marquis of Salisbury.—(Received February 25.)*

(No. 43. Confidential.)

My Lord, *The Hague, February 18, 1889.*

THERE is, I am afraid, little doubt that, in conversation with several of my colleagues, the Minister for Foreign Affairs has held what seems to me imprudently uncompromising language on the subject of the attitude which the Netherland Government are prepared to take in the Borneo question. M. Hartsen is reported to me to have said that the declaration of the Protectorate over North Borneo could not, in his opinion, take place until after the demarcation of the boundaries with the Dutch possessions had been finally settled.

The communication which I made to his Excellency on the 10th instant, in obedience to your Lordship's instructions, will have made it clear to him that Her Majesty's Government are in no way prepared to defer the operation of the Protecting Agreements concluded by them with the three States of North Borneo. I thought it, nevertheless, not amiss to disabuse one of my colleagues, to whom M. Hartsen had evidently spoken in the sense above mentioned. I said that I had good reason to believe that the British Protectorate would shortly be publicly declared, as it was not to be expected that Her Majesty's Government would postpone taking action in the matter till after the final settlement of a very complicated boundary question, which it might take years to conclude.

Some allowance must be made for M. Hartson on account of the attacks to which he has been subjected in this affair. He has been driven to some extent to assume a high patriotic line, and has been therein considerably influenced, I believe, by his Chef de Cabinet, M. van der Staal, a somewhat injudicious person with Chauvinist proclivities.

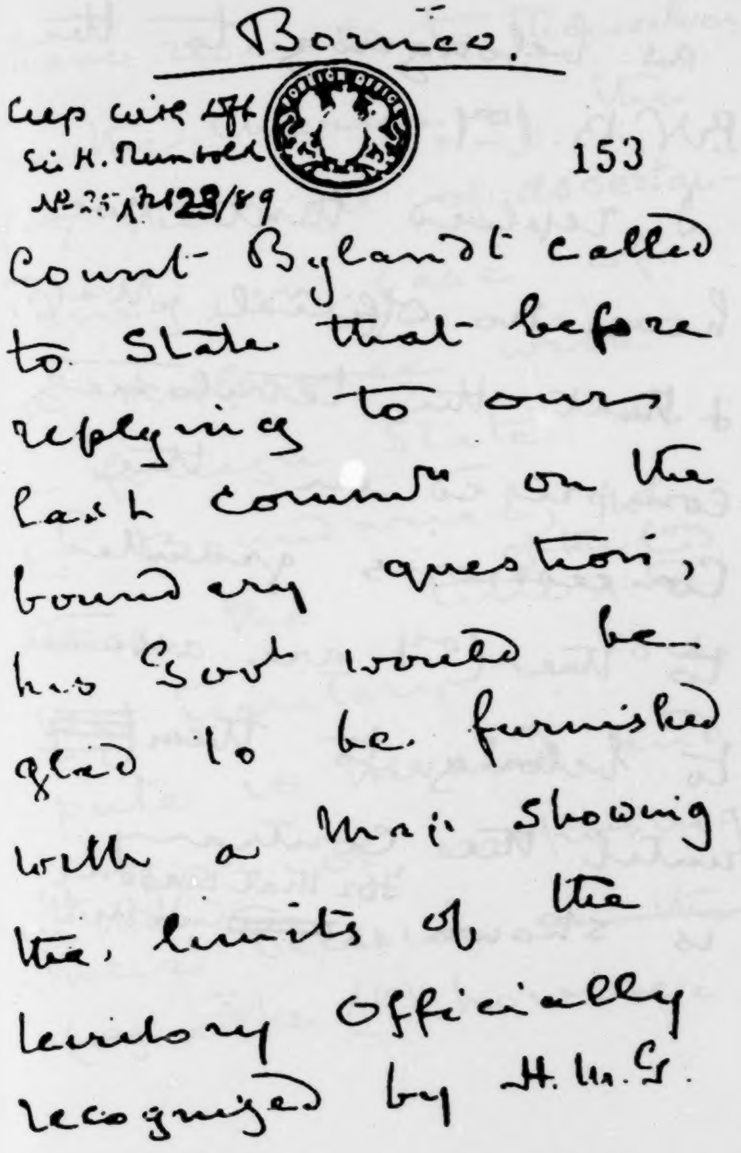
On the other hand, there is evidence that those persons here who are most conversant with colonial affairs are quite resigned to the only possible termination of the question. At a meeting of the "Indian Society," which took place a few days ago, the subject of Borneo was discussed at length, the principal speaker giving it as his opinion that Dutch interests would be in no way prejudiced by the establishment of the Protectorate of England over North Borneo. How, he inquired, could the Netherland Government exercise effectual supervision over a coast-line of upwards of 1,200 miles, which was the scene of constant depredations on the part of Dyak and Sulu pirates? The Dutch capital invested in North Borneo showed, too, that the British influence in those regions was in no way feared, and even a former Colonial Minister, M. Sprengen van Eyk, was connected with a Company on the north coast, which proved that he had every confidence in the British Protectorate. As regards the boundary question, he thought it would be better to concede the entire bay of St. Lucia to England than to aim at a division of it, which could only lead to complications.

I have, &c.

(Signed) HORACE RUMBOLD.

## Annex 43

## MEMORANDUM BY SIR J. PAUNCEFOTE DATED 23 FEBRUARY 1889



Borneo.

Cop with dft
Sir H. Rumbold
No 25 Ap 28/89

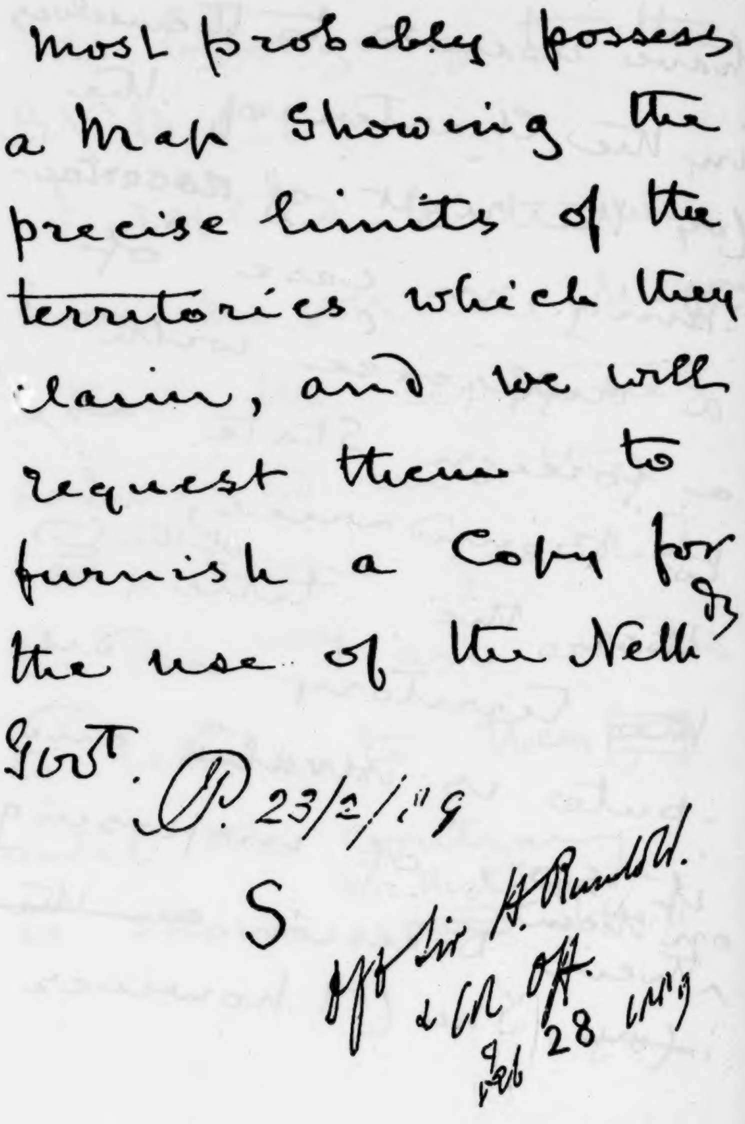
153

Count Bylandt called to state that before replying to ours last comm^n on the boundary question, his Gov^t would be glad to be furnished with a map showing the limits of the territory officially recognized by H.M.G.

as belonging to the B.N.B. Coy.

I replied that we have no Official Maps; & that the territories comprised in the Concessions granted to the Coy are assumed to belong to them until the contrary is shown. For that reason H.M.G.

have reserved to themselves in the Charter of the Coy the right of ascertaining, in case of a difference with a foreign State as to Boundaries, whether the title of the Coy to the territory in dispute is invalid, and if so, of imposing on them their Decision. ~~on the Coy~~. The Coy however



most probably possess
a Map showing the
precise limits of the
territories which they
claim, and we will
request them to
furnish a Copy for
the use of the Neth^ds
Govt.

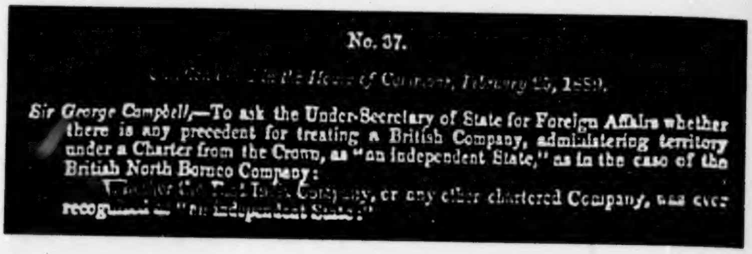
P. 23/2/09

S

Off^d Sir H. Rumbold.
& Col Off.
Feb 28 09

## Annex 44

## PARLIAMENTARY DEBATES (COMMONS) 1889: *QUESTION ASKED IN THE HOUSE OF COMMONS, 25 FEBRUARY 1889*

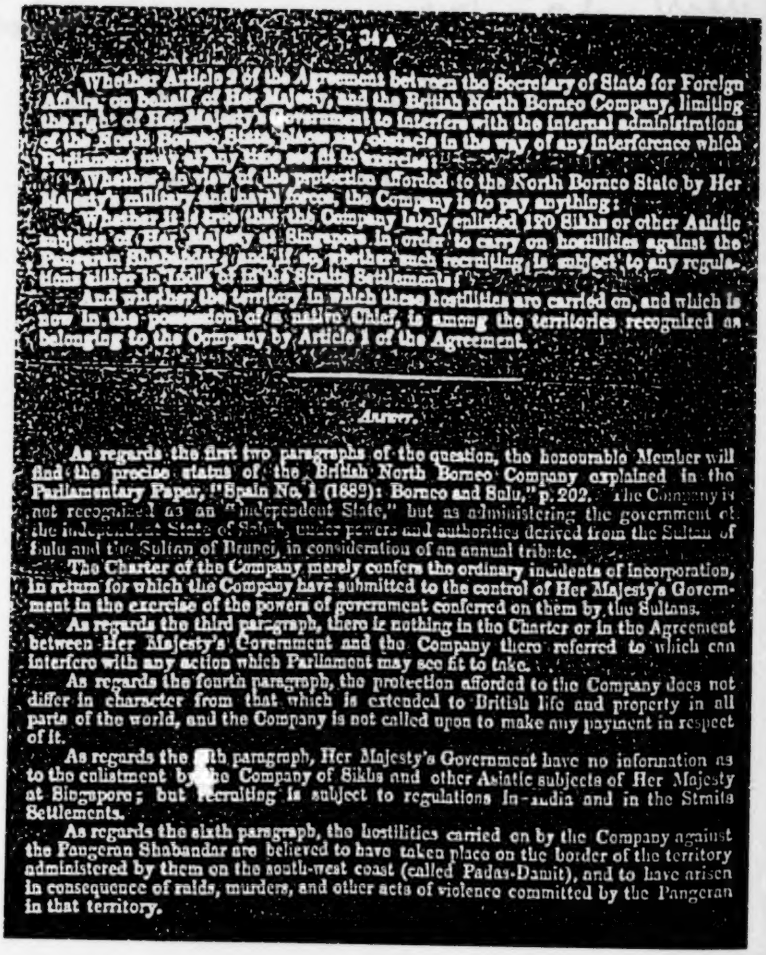


## No. 37.

*[illegible] in the House of Commons, February 25, 1889.*

*Sir George Campbell*,—To ask the Under-Secretary of State for Foreign Affairs whether there is any precedent for treating a British Company, administering territory under a Charter from the Crown, as "an independent State," as in the case of the British North Borneo Company:

Whether the East India Company, or any other chartered Company, was ever recognized as "an independent State:"



34 A

Whether Article 2 of the Agreement between the Secretary of State for Foreign Affairs, on behalf of Her Majesty, and the British North Borneo Company, limiting the right of Her Majesty's Government to interfere with the internal administrations of the North Borneo State, places any obstacle in the way of any interference which Parliament may at any time see fit to exercise:

Whether, in view of the protection afforded to the North Borneo State by Her Majesty's military and naval forces, the Company is to pay anything:

Whether it is true that the Company lately enlisted 120 Sikhs or other Asiatic subjects of Her Majesty at Singapore in order to carry on hostilities against the Pangeran Shahbandar, and if so, whether such recruiting is subject to any regulations either in India or in the Straits Settlements:

And whether the territory in which these hostilities are carried on, and which is now in the possession of a native Chief, is among the territories recognized as belonging to the Company by Article 1 of the Agreement.

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*Answer.*

As regards the first two paragraphs of the question, the honourable Member will find the precise status of the British North Borneo Company explained in the Parliamentary Paper, "Spain No. 1 (1889): Borneo and Sulu," p. 202. The Company is not recognized as an "independent State," but as administering the government of the independent State of Sabah, under powers and authorities derived from the Sultan of Sulu and the Sultan of Brunei, in consideration of an annual tribute.

The Charter of the Company merely confers the ordinary incidents of incorporation, in return for which the Company have submitted to the control of Her Majesty's Government in the exercise of the powers of government conferred on them by the Sultans.

As regards the third paragraph, there is nothing in the Charter or in the Agreement between Her Majesty's Government and the Company there referred to which can interfere with any action which Parliament may see fit to take.

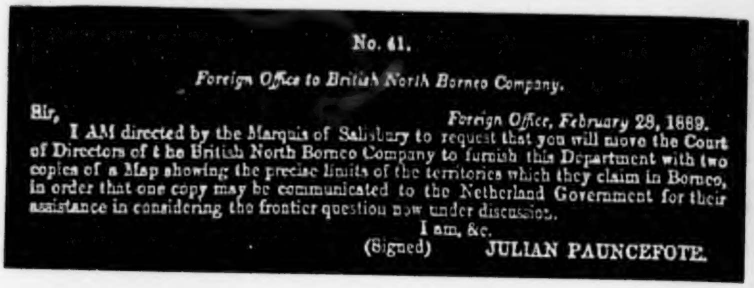
As regards the fourth paragraph, the protection afforded to the Company does not differ in character from that which is extended to British life and property in all parts of the world, and the Company is not called upon to make any payment in respect of it.

As regards the fifth paragraph, Her Majesty's Government have no information as to the enlistment by the Company of Sikhs and other Asiatic subjects of Her Majesty at Singapore; but recruiting is subject to regulations in India and in the Straits Settlements.

As regards the sixth paragraph, the hostilities carried on by the Company against the Pangeran Shabandar are believed to have taken place on the border of the territory administered by them on the south-west coast (called Padas-Damit), and to have arisen in consequence of raids, murders, and other acts of violence committed by the Pangeran in that territory.

## Annex 45

## LETTER FROM SIR J. PAUNCEFOTE
TO BRITISH NORTH BORNEO COMPANY
DATED 28 FEBRUARY 1889



## No. 41.

*Foreign Office to British North Borneo Company.*

Sir, *Foreign Office, February 28, 1889.*

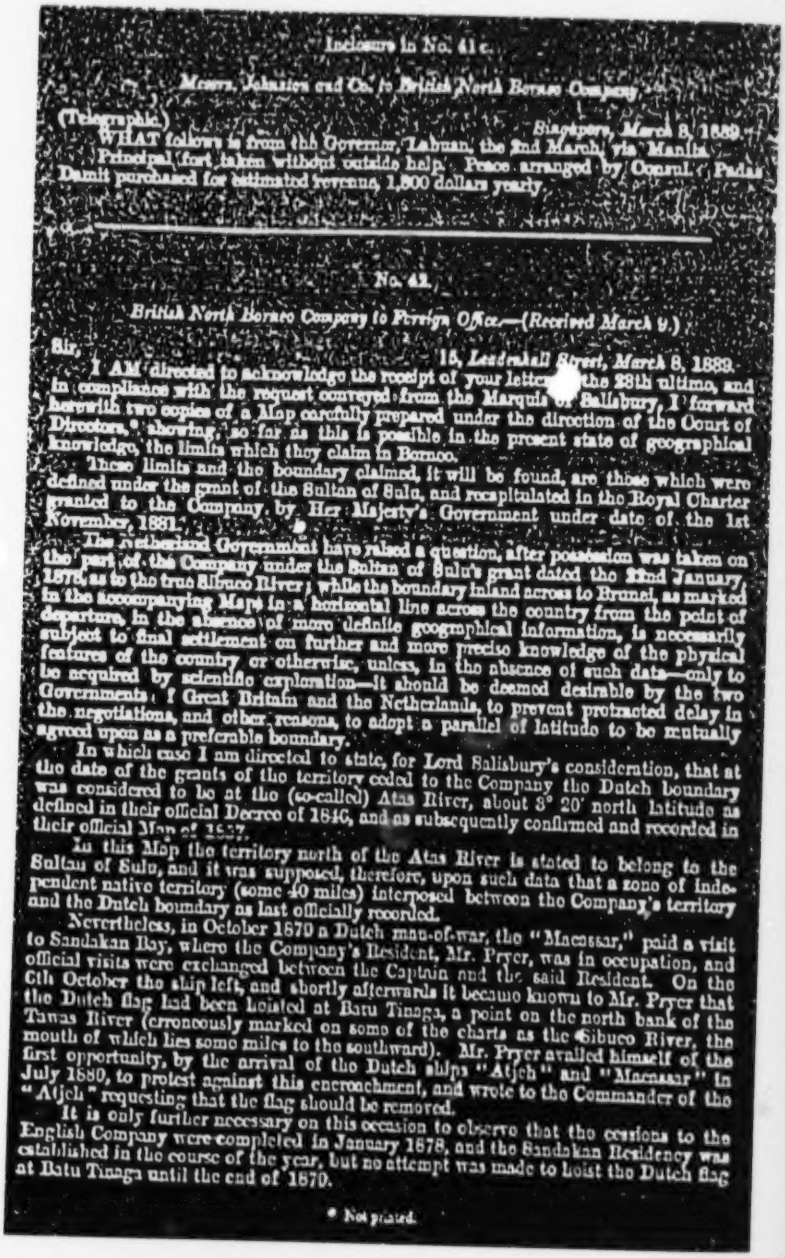
I AM directed by the Marquis of Salisbury to request that you will move the Court of Directors of the British North Borneo Company to furnish this Department with two copies of a Map showing the precise limits of the territories which they claim in Borneo, in order that one copy may be communicated to the Netherland Government for their assistance in considering the frontier question now under discussion.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

## Annex 46

# LETTER FROM BRITISH NORTH BORNEO COMPANY TO FOREIGN OFFICE, DATED 8 MARCH 1889



### Inclosure in No. 41 c.

*Messrs. Johnston and Co. to British North Borneo Company.*

(Telegraphic.)

*Singapore, March 8, 1889.*

WHAT follows is from the Governor, Labuan, the 2nd March, via Manila:—

Principal fort taken without outside help. Peace arranged by Consul. Padas Damit purchased for estimated revenue, 1,800 dollars yearly.

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### No. 42.

*British North Borneo Company to Foreign Office.—(Received March 9.)*

Sir,

*15, Leadenhall Street, March 8, 1889.*

I AM directed to acknowledge the receipt of your letter [illegible] the 28th ultimo, and in compliance with the request conveyed from the Marquis of Salisbury, I forward herewith two copies of a Map carefully prepared under the direction of the Court of Directors,* showing, so far as this is possible in the present state of geographical knowledge, the limits which they claim in Borneo.

These limits and the boundary claimed, it will be found, are those which were defined under the grant of the Sultan of Sulu, and recapitulated in the Royal Charter granted to the Company by Her Majesty's Government under date of the 1st November, 1881.

The Netherland Government have raised a question, after possession was taken on the part of the Company under the Sultan of Sulu's grant dated the 22nd January, 1878, as to the true Sibuco River; while the boundary inland across to Brunei, as marked in the accompanying Map in a horizontal line across the country from the point of departure, in the absence of more definite geographical information, is necessarily subject to final settlement on further and more precise knowledge of the physical features of the country or otherwise, unless, in the absence of such data—only to be acquired by scientific exploration—it should be deemed desirable by the two Governments of Great Britain and the Netherlands, to prevent protracted delay in the negotiations, and other reasons, to adopt a parallel of latitude to be mutually agreed upon as a preferable boundary.

In which case I am directed to state, for Lord Salisbury's consideration, that at the date of the grants of the territory ceded to the Company the Dutch boundary was considered to be at the (so-called) Atas River, about 3° 20′ north latitude as defined in their official Decree of 1846, and as subsequently confirmed and recorded in their official Map of 1857.

In this Map the territory north of the Atas River is stated to belong to the Sultan of Sulu, and it was supposed, therefore, upon such data that a zone of independent native territory (some 40 miles) interposed between the Company's territory and the Dutch boundary as last officially recorded.

Nevertheless, in October 1879 a Dutch man-of-war, the "Macassar," paid a visit to Sandakan Bay, where the Company's Resident, Mr. Pryer, was in occupation, and official visits were exchanged between the Captain and the said Resident. On the 6th October the ship left, and shortly afterwards it became known to Mr. Pryer that the Dutch flag had been hoisted at Batu Tinaga, a point on the north bank of the Tawas River (erroneously marked on some of the charts as the Sibuco River, the mouth of which lies some miles to the southward). Mr. Pryer availed himself of the first opportunity, by the arrival of the Dutch ships "Atjeh" and "Macassar" in July 1880, to protest against this encroachment, and wrote to the Commander of the "Atjeh" requesting that the flag should be removed.

It is only further necessary on this occasion to observe that the cessions to the English Company were completed in January 1878, and the Sandakan Residency was established in the course of the year, but no attempt was made to hoist the Dutch flag at Batu Tinaga until the end of 1879.

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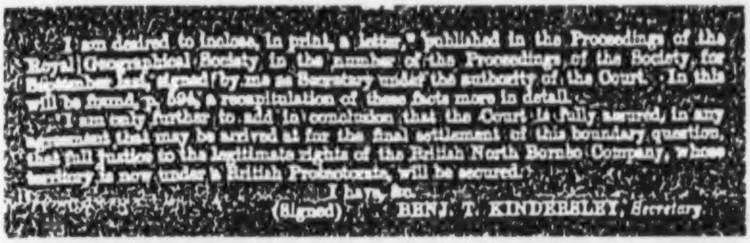
* Not printed.



I am desired to inclose, in print, a letter,* published in the Proceedings of the Royal Geographical Society, in the number of the Proceedings of the Society, for September last, signed by me as Secretary under the authority of the Court. In this will be found, p. 694, a recapitulation of these facts more in detail.

I am only further to add in conclusion that the Court is fully assured, in any agreement that may be arrived at for the final settlement of this boundary question, that full justice to the legitimate rights of the British North Borneo Company, whose territory is now under a British Protectorate, will be secured.

I have, &c.

(Signed) BENJ. T. KINDERSLEY, *Secretary.*

## Annex 47

## DESPATCH FROM MR. HARTSEN TO COUNT DE BYLANDT DATED 19 MARCH 1889

## No. 1.

### *M. Hartsen to Count de Bylandt.—(Communicated to the Marquis of Salisbury by Count de Bylandt, March 27.)*

M. le Comte, *La Haye, le* 19 *Mars*, 1889.

SIR HORACE RUMBOLD m'a remis le 10 Février dernier copie d'une dépêche du Marquis de Salisbury, Principal Secrétaire d'État pour les Affaires Étrangères de Sa Majesté Britannique, du 5 Février dernier se rapportant à la question de délimitation entre les possessions Néerlandaises dans l'Ile de Bornéo, et le territoire auquel prétend la "British North Borneo Company," par suite de cessions faites en sa faveur par les Princes indigènes de Broenei et de Solok, et de la Charte accordée le 1er Novembre, 1881, par le Gouvernement Britannique.

Cette dépêche a été suivie par la remise, de la part du Gouvernement Britannique, d'une copie des Conventions conclues avec le Radjah de Sarawak, le Sultan de Broenei, et la "North Borneo Company," regardant le Protectorat que le dit Gouvernement a proclamé, et indiquant que le territoire de la "Company" est composé des provinces suivantes: Alcock, Cuncliffe, Dent, Deerhurst, Elphinstone, Keppel, Martin, Mayne et Wyburgh, dont cependant l'indication géographique n'est pas donnée; la connaissance de celle-ci étant indispensable, je me suis permis de demander par votre entremise, le 22 Février dernier, une Carte officielle du territoire réclamé pour la "North Borneo Company."

Ce document n'est pas encore entre mes mains, mais en attendant j'ai donné la plus sérieuse attention au contenu de la dépêche de Lord Salisbury, qui sert aussi en réponse à celle que je vous ai adressée le 22 Décembre dernier, et dont vous avez laissé copie à sa Seigneurie le 3 Janvier suivant.

Dans la première partie de sa dépêche le Marquis de Salisbury s'efforce de prouver que le Gouvernement du Roi a tort de prétendre que votre note du 1er Décembre, 1882, à Lord Granville, et celle que mon prédécesseur, M. van der Does de Willebois, vous a adressée le 13 Mars, 1884, sont restées sans réponse; malgré cela, sa Seigneurie se prête à donner ces réponses encore aujourd'hui.

Sans donc revenir sur l'intervalle de quelques années entre les dates de nos dépêches et la réponse que je viens de recevoir, je me permets de relever quelques inexactitudes qui se sont glissées dans la première partie de la dépêche de Lord Salisbury.

Ainsi, c'est par erreur que la dépêche prétend que le Gouvernement du Roi aurait admis, dans la note du 1er Décembre, 1882, ne pas connaître exactement le cours de la Rivière Siboekoe; au contraire, il est constaté que la Rivière Siboekoe se jette dans la mer près de l'Ile de Nanokong; on a admis de la part du Gouvernement Néerlandais la possibilité que les Sieurs Dent et von Overbeck, et même les deux Sultans, se soient trompés dans l'indication de la rivière; la note de M. van der Does de Willebois du 13 Mars, 1884, prouve, s'il est possible, encore plus clairement que le faisaient les précédentes, qu'un examen de la situation exacte du Siboekoe était inutile pour le Gouvernement des Pays-Bas, celui-ci n'a pas eu la moindre incertitude sur la situation de cette rivière, et nous n'en avons pas davantage aujourd'hui.

Je me permets d'indiquer une autre erreur. Sa Seigneurie paraît avoir perdu de vue que la note de mon prédécesseur, M. Rochussen, du 23 Mars, 1883, a réfuté complètement l'assertion, que le pavillon Néerlandais n'aurait pas été hissé à Batoe-Tinagat avant 1883. Il est prouvé que le drapeau Néerlandais y flottait bien avant la dite époque, et le Gouvernement Anglais ne saurait prétendre l'ignorer, car l'indication en est faite sur la Carte de Bornéo, communiquée au Parlement avec la correspondance se rapportant aux réclamations de l'Espagne. (Voir le Blue Book de 1882, "Spain No. 1: Borneo and Sulu.")

Je ne saurais non plus passer sous silence l'observation du Marquis de Salisbury, que ma dépêche du 22 dernier ne contenait ni nouveau fait, ni nouvel argument; je me permets de faire observer que la réponse du Gouvernement Britannique aux deux notes mentionnées ci-dessus se faisant toujours attendre, il était inutile de produire de nouveaux arguments, tant que ceux de mes prédécesseurs n'avaient pas été réfutés. Lord Granville dans sa lettre à votre Excellence s'exprime comme suit:—

"In reply to your letter of the 1st December last upon the subject of the limits of the Netherland territory on the north-east coast of Borneo, I beg to assure you that the arguments brought forward therein will be carefully considered by Her Majesty's Government."

Le résultat de cet examen n'est parvenu au Gouvernement des Pays-Bas que par la dépêche, dont Sir Horace Rumbold vient de me laisser copie.

Lord Salisbury accomplissant ainsi la promesse de Lord Granville, j'ai l'honneur, avant de revenir sur les détails de sa réponse, de m'arrêter à ce que sa Seigneurie veut bien avancer par rapport aux instructions données à Mr. Stuart, "to suggest to the Netherland Government the nomination of British and Netherland Commissioners, with instruction to examine into the question on the spot, and to report the result to their respective Governments, and he was told, should this course not result in an agreement being come to, to suggest that a recourse should be had to arbitration."

Il me faut rappeler que mes prédécesseurs ont constaté à juste titre, que la dignité du Gouvernement du Roi, mon auguste Souverain, ne lui permettait pas d'entrer, sur le pied de Puissance à Puissance, en négociations avec une Compagnie privée, pour se sauvegarder des "encroachments" de la part de cette dernière sur des territoires, qui depuis nombre d'années sont soumis à la domination Néerlandaise.

Le Gouvernement Britannique persiste à soutenir qu'à l'époque où les Sieurs Dent et von Overbeck obtinrent leurs Concessions, le Gouvernement du Roi ne pouvait faire valoir des droits sur la côte orientale de Borneo, que jusqu'au 3° 20′ de latitude septentrionale, et il se base pour former cette conclusion sur l'Arrêté du Gouverneur-Général des Indes Néerlandaises de 1846.

Il faut pour parvenir à cette thèse inexplicable, et pour la soutenir, qu'on se refuse à l'évidence démontrée dans la note de votre Excellence du 1er Décembre, 1882; le dit Arrêté de 1846 n'avait aucunement le but de fixer, ni même d'indiquer les frontières politiques, mais seulement de régler la juridiction dans ces parages, et il importe de ne pas laisser inaperçu le passage suivant de cette Arrêté:—

"Zonder dat de aanspraak, welke Nederland op eenige buiten de daarbij opgenoemde landen en districten mocht willen doen gelden, door die omschrijving in het minst wordt verzwakt of daaraan gederogeerd."

Ce qui veut dire:—

"Sans que les droits que les Pays-Bas voudraient faire valoir sur des États et districts situés en dehors de ceux y mentionnés, puissent le moins du monde être affaiblis par ces indications, ou bien y déroger."

Le Gouvernement Britannique semble attacher une valeur toute particulière à cet Arrêté de 1846, parce qu'il a été inséré dans le journal officiel des Pays-Bas.

Ce même journal a servi à la publication de la communication faite aux États-Généraux en 1850, qui complétait et rectifiait l'Arrêté du Gouverneur-Général des Indes Néerlandaises de 1846. Cet Arrêté n'a, du reste, jamais été remis au Gouvernement Britannique par celui des Pays-Bas, parce qu'il ne touchait pas à la question de délimitation; c'est Sir E. Disbrowe qui l'a communiqué à son Gouvernement, et il faut probablement attribuer à cette circonstance, que la réserve faite dans cet Arrêté, en ce qui concerne les limites politiques, a échappé à l'attention du Gouvernement Britannique.

Quant à la communication faite aux États-Généraux en 1850 (le 12 Novembre) elle constatait qu'un examen sur les lieux avait appris que le territoire jusqu'au 4° 20′ de latitude septentrionale était sous la dépendance du Sultan de Boelongan; le résultat de cet examen se voit complètement confirmé par le Contrat Politique conclu avec le dit Sultan de Boelongan. Ce Contrat de 1850 indique que la frontière séparant au nord du côté de la mer son territoire de celui du Sultan de Solok, est le point Batoe-Tinagat et la Rivière Tawao.

Il n'y avait pas lieu de faire connaître ce Contrat de 1850 au Gouvernement Britannique, parce qu'il ne constituait aucun nouveau droit pour les Pays-Bas, mais servait exclusivement à confirmer des droits déjà existants.

Le Gouvernement Britannique semble encore mettre en doute l'existence du dit Contrat; j'en ajoute une copie à la présente dépêche, à l'usage du Cabinet de Londres, dans le but de mettre fin à ce doute; la connaissance de ce document pourra servir en même temps à prouver que ce n'est pas sans raison que le Contrat avec le même Sultan de 1878 se rapporte à des Contrats antérieurs; non seulement la copie ci-jointe le prouve, mais encore il importe de constater que l'existence de Contrats précédents est indiquée dans celui de 1878; l'entête de ce document parle de Contrats existants, et dans l'Article 1er le Sultan et les Grands du pays se réfèrent aux déclarations faites par leurs prédécesseurs, et l'Article 26 déclare annulés tous les Contrats antérieurs.

En résumé ces documents, soit la communication faite aux États-Généraux en 1850, le Contrat avec Boelongan de 1850, l'Arrêté du Gouverneur-Général des Indes Néerlandaises du 2 Février, 1877, le dernier Contrat avec Boelongan du 2 Juin, 1878, tous ces documents sont d'accord pour réfuter complètement la thèse, qu'à l'époque où les Concessions furent accordées aux Sieurs Dent et von Overbeck, les droits des Pays-Bas étaient limités à 3° 20' de latitude; ils fournissent la preuve irrécusable que les Pays-Bas exerçaient bien avant cette époque des droits de souveraineté, jusqu'à Batoe-Tinagat et la Rivière Tawao.

Pour constater ces faits, le Gouvernement Britannique se base exclusivement sur deux Cartes géographiques, publiées dans les Pays-Bas, la première par un officier de la Marine, M. Melvill de Carnbee, en 1848; celle-ci ne saurait plus avoir aucune valeur; elle était composée sur des données incomplètes, car elle a paru antérieurement au Contrat de 1850 et aux autres documents que je viens de détailler; l'autre a été publiée en 1857, à Bréda, par un Sieur Bogaerts.

Sans s'informer de la qualité de cet individu, qui était un lithographe, et pas même un géographe, M. le Comte, le Marquis de Salisbury attache une grande importance à la dernière de ces deux Cartes, qui n'est qu'une reproduction de la Carte de M. Melvill de Carnbee. Sa Seigneurie a même bien voulu me faire parvenir une reproduction photographique de Cette carte incomplète. Cependant j'affirme que ni l'une ni l'autre de ces deux Cartes n'a aucun caractère officiel; le Gouvernement des Pays-Bas n'a été pour rien dans la publication, faite par des particuliers dans leur intérêt personnel. Ces Cartes n'ont donc aucune valeur authentique, et il y a lieu de s'étonner que, malgré tout ce qui a été précédemment allégué de notre côté, Lord Salisbury trouve dans ces productions le moindre argument; je ne saurais, M. le Comte, en admettre la valeur.

C'est avec plus de droit que je crois pouvoir me rapporter à deux Cartes Anglaises: "China Sea, southern portion," de 1867, corrigée en 1873, et Sulu Archipelago, 1858," corrigée en 1873, et recorrigée en 1878.

Je me permets de vous en remettre ci-joint, à l'usage de Lord Salisbury, des copies photographiques.

Ces Cartes, publiées par l'Amirauté Anglaise, indiquent la Rivière du Siboekoe au nord du point Batoe-Tinagat.

Ce fait a d'autant plus d'importance s'il est mis en rapport avec le contenu de la Charte accordée à la British North Borneo Company; ce document en traçant la limite approximative ne parle que des terrains environnant la Darwel Bay, jusqu'à la Rivière Siboekoe, il ne fait aucune mention de Sainte-Lucia Bay, comme il aurait dû le faire, s'il s'agissait en effet de la Siboekoe, telle que la situation en est constatée par le Gouvernement Néerlandais; dans ce cas tous les terrains environnant la Sainte-Lucia Bay auraient été compris dans la Concession.

La dépêche de Lord Salisbury du 5 Février dernier se réfère à une communication insérée dans le Rapport Colonial de 1877 (p. 24). Sa Seigneurie en déduit que le Gouvernement des Pays-Bas considérait à cette époque la Rivière Sessajap comme formant la frontière septentrionale des possessions Néerlandaises à la côte orientale de Bornéo. Le sens attribué à la dite communication ne saurait, en effet, être exact. Il n'était pas question dans cette communication de fixer les frontières ou de résoudre des questions territoriales, mais seulement d'indiquer les parages, où l'on allait agir contre la piraterie; ainsi les navires de guerre, auxquels la communication se rapporte, n'avaient pas eu mission de stationner à un point indiqué, mais de croiser en pleine mer devant les côtes de quelques districts, savoir, les districts de Berouw, de Boelongan, et de Sessajap. Or, Sessajap est le district principal des États de Tidoeng, qui se désignaient d'ordinaire sous le nom général de Sessajap; il est donc évident que la conclusion qu'on forme de la communication de 1877 n'est pas justifié et ne saurait en aucune façon porter atteinte à la valeur du Contrat conclu avec Boelongan en 1850.

Je crois, M. le Comte, être en droit de constater, en me référant à ce qui précède, que quels que soient les arguments du Marquis de Salisbury, les droits des Pays-Bas sur le territoire situé sur la côte orientale, de Bornéo jusqu'au point Batoe-Tinagat, n'en sont aucunement atteint, et le Gouvernement du Roi ne peut que maintenir en entier ces droits, et protester énergiquement contre toute prétention avancée par la "North Borneo Company" sur le territoire situé au sud de Batoe-Tinagat, que depuis des temps immémoriaux est sous la domination Néerlandaise.

Le Gouvernement Néerlandais est convaincu, que les sentiments de justice du Cabinet de Saint-James feront reconnaitre les droits légitimes des Pays-Bas et prêter son concours et ses bons offices pour arriver à une délimitation de frontières qui pourrait permettre au Gouvernement du Roi de reconnaître la protection du Gouvernement Britannique sur les États de Broenoi, Sarawak, et le territoire de la "North Borneo Company," délimitation basée sur les Contrats conclus entre les Pays-Bas et Boeloengan et sur l'Arrêté du Gouverneur-Général des Indes Néerlandaises du 2 Février, 1877 (J. O. des Indes, No. 31), de la manière telle qu'elle est proposée dans ma note du 22 Décembre dernier.

Je ne doute pas que le Gouvernement de Sa Majesté Britannique ne veuille partager ces vues, surtout quand il se sera convaincu que c'est une erreur de supposer que la liberté de navigation sur les rivières parcourant le territoire Néerlandais à la côte orientale de Borneo pourrait être mise en question.

Ce n'est pas dans l'intention "to bar all free access to the Sibockoo and other rivers," pour mettre des entraves à la liberté de la navigation, que le Gouvernement du Roi a fait stationner une canonnière à la côte de Batoe-Tinagat. Tout doute à cet égard est impossible, si l'on veut bien se rappeler le contenu de la dépêche à Lord Granville du 1er Décembre, 1883, qui disait: "Mais rien n'est plus loin des intentions du Gouvernement du Roi que d'opposer à ces intérêts (de commerce et navigation) la moindre difficulté. Tout récemment j'ai eu moi-même occasion d'en donner au Foreign Office l'assurance formelle, que mon Gouvernement a entièrement approuvée, et me charge de réitérer expressément à votre Excellence dans l'affaire qui nous occupe actuellement."

Cette déclaration fut renouvelée dans la note à votre Excellence du 23 Mai 1883, dont copie fut remise à Lord Granville le 25 du même mois, et dans laquelle mon prédécesseur, M. Rochussen, s'exprimait de la manière suivante.

Quant au bâtiment de guerre stationné sur la Rivière Tawao, sa seule destination est de protéger l'établissement Néerlandais sur cette rivière, et nullement d'en empêcher le libre accès. Vous pouvez, M. le Comte, à cet égard encore, vous référer à votre note du 1er Décembre, où l'intention du Gouvernement Royal de n'entraver en rien le commerce et la navigation a été manifesté de la manière la plus formelle.

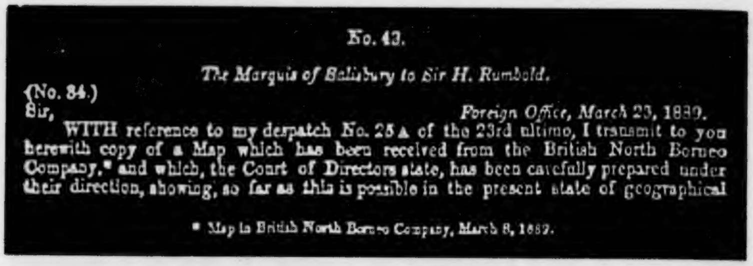
Il semble inutile de rien ajouter à ces déclarations que je rappelle au souvenir du Gouvernement Britannique, et après examen desquelles je ne doute pas que Lord Salisbury aura la conviction que la reconnaissance des droits des Pays-Bas sur la côte orientale de l'Ile de Bornéo, ne saurait en aucune façon nuire à la libre navigation sur le parcours des rivières à l'ouest de Batoe-Tinagat.

Je vous autorise à donner lecture de cette dépêche au Marquis de Salisbury et à lui en laisser copie si vous le jugez nécessaire.

Veuillez, &c.
(Signé) HARTSEN.

## Annex 48

# DESPATCH FROM LORD SALISBURY TO SIR H. RUMBOLD
# DATED 23 MARCH 1889



No. 43.

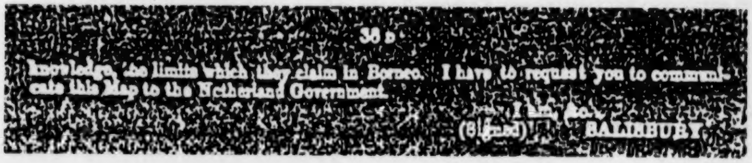
*The Marquis of Salisbury to Sir H. Rumbold.*

(No. 34.)

Sir, *Foreign Office, March 23, 1889.*

WITH reference to my despatch No. 25 A of the 23rd ultimo, I transmit to you herewith copy of a Map which has been received from the British North Borneo Company,* and which, the Court of Directors state, has been carefully prepared under their direction, showing, so far as this is possible in the present state of geographical

* Map in British North Borneo Company, March 8, 1889.



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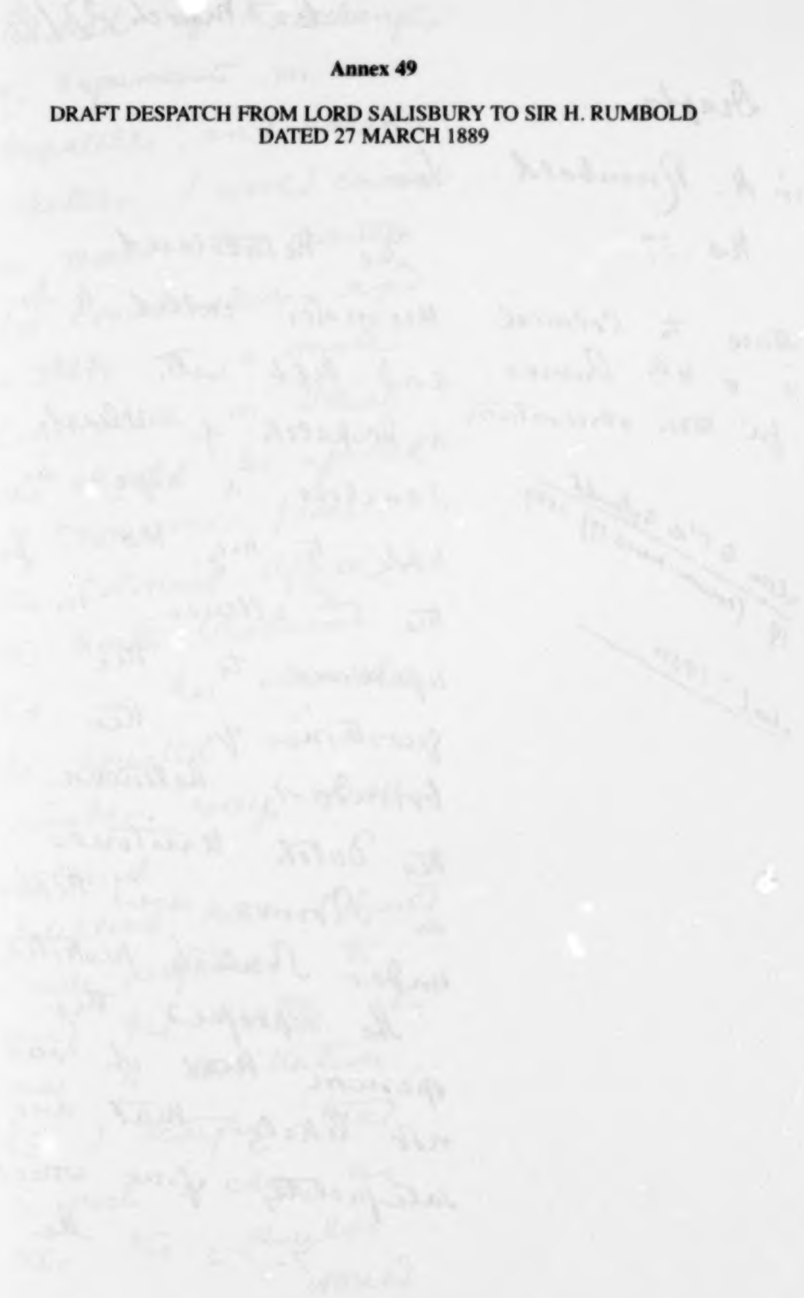
knowledge, the limits which they claim in Borneo. I have to request you to communicate this Map to the Netherland Government.

I am, &c.

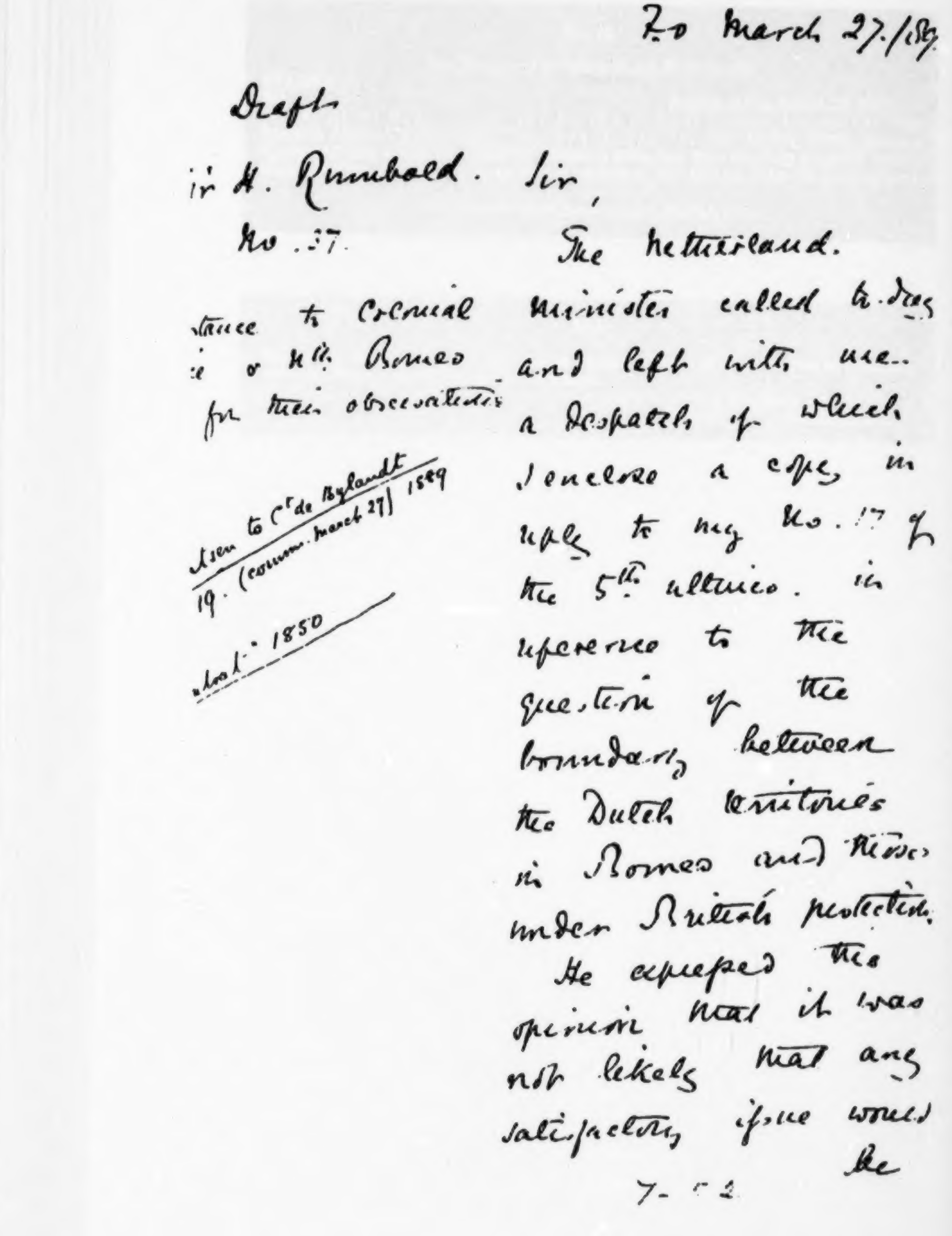
(Signed) SALISBURY.

## Annex 49

## DRAFT DESPATCH FROM LORD SALISBURY TO SIR H. RUMBOLD DATED 27 MARCH 1889



Sir H. Rumbold



F.O. March 27/1889.

Draft

ir H. Rumbold.

No. 37.

rance to Colonial
e & Nth Borneo
for their observations

Also sent to Ct de Bylandt
19. (commu. March 27) 1889

[illegible] 1850

Sir,

The Netherland Minister called to-day and left with me a despatch of which I enclose a copy, in reply to my No. 17 of the 5th ultimo, in reference to the question of the boundary between the Dutch territories in Borneo and those under British protection.

He expressed the opinion that it was not likely that any satisfactory issue would be

7- - 2

reached by the exchange of arguments in despatches, and asked whether I would consent to remit the question for consideration and advice to a small Committee in which we should be assisted by some one from the Colonial Office & the North Borneo Co., & he should be assisted in a similar way from Holland.

I replied that I should have preferred to send the matter at once to arbitration, as I thought that in such a case as this the result would

would be quite as
satisfactory, and certainly
be more speedily attained
but as the Netherlands
Govt. had proposed the
plan he had fully
indicated we would
not offer any objection
to its adoption. 263

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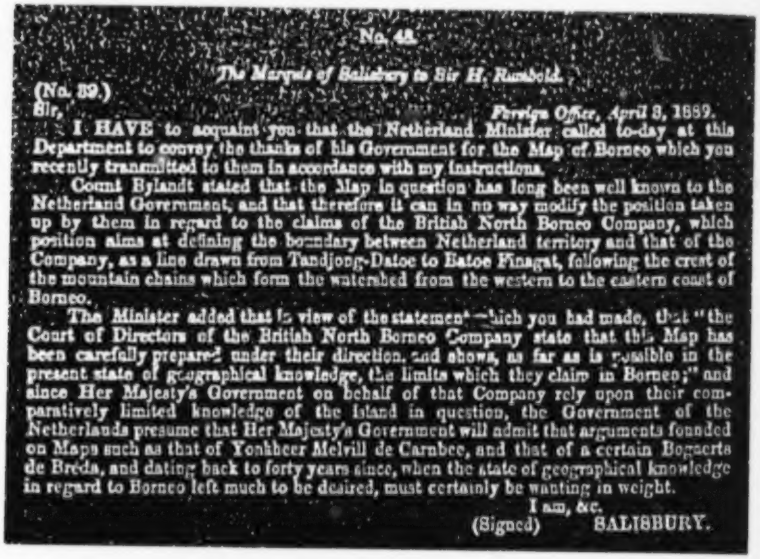
## Annex 50

# DESPATCH FROM LORD SALISBURY TO SIR H. RUMBOLD DATED 3 [8?] APRIL 1889



## No. 48.

*The Marquis of Salisbury to Sir H. Rumbold.*

(No. 39.)

Sir, *Foreign Office, April 8, 1889.*

I HAVE to acquaint you that the Netherland Minister called to-day at this Department to convey the thanks of his Government for the Map of Borneo which you recently transmitted to them in accordance with my instructions.

Count Bylandt stated that the Map in question has long been well known to the Netherland Government, and that therefore it can in no way modify the position taken up by them in regard to the claims of the British North Borneo Company, which position aims at defining the boundary between Netherland territory and that of the Company, as a line drawn from Tandjong-Datoe to Batoe Tinagat, following the crest of the mountain chains which form the watershed from the western to the eastern coast of Borneo.

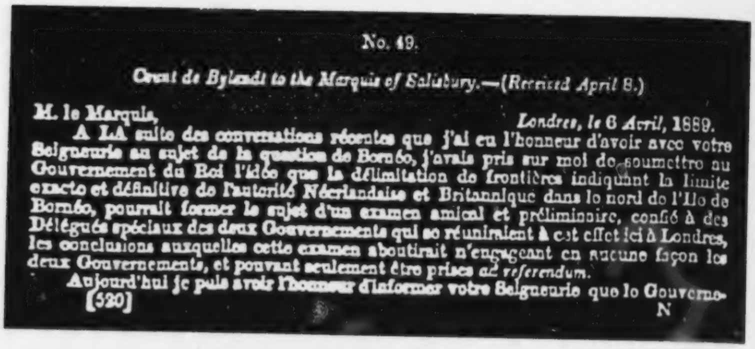
The Minister added that in view of the statement which you had made, that "the Court of Directors of the British North Borneo Company state that this Map has been carefully prepared under their direction, and shows, as far as is possible in the present state of geographical knowledge, the limits which they claim in Borneo;" and since Her Majesty's Government on behalf of that Company rely upon their comparatively limited knowledge of the island in question, the Government of the Netherlands presume that Her Majesty's Government will admit that arguments founded on Maps such as that of Yonkheer Melvill de Carnbee, and that of a certain Bogaerts de Breda, and dating back to forty years since, when the state of geographical knowledge in regard to Borneo left much to be desired, must certainly be wanting in weight.

I am, &c.

(Signed) SALISBURY.

## Annex 51

## DESPATCH FROM COUNT DE BYLANDT TO LORD SALISBURY DATED 6 APRIL 1889



### No. 49.

*Count de Bylandt to the Marquis of Salisbury.—(Received April 8.)*

M. le Marquis,

*Londres, le* 6 *Avril*, 1889.

A LA suite des conversations récentes que j'ai eu l'honneur d'avoir avec votre Seigneurie au sujet de la question de Bornéo, j'avais pris sur moi de soumettre au Gouvernement du Roi l'idée que la délimitation de frontières indiquant la limite exacte et définitive de l'autorité Néerlandaise et Britannique dans le nord de l'Ile de Bornéo, pourrait former le sujet d'un examen amical et préliminaire, confié à des Délégués spéciaux des deux Gouvernements qui se réuniraient à cet effet ici à Londres, les conclusions auxquelles cette examen aboutirait n'engageant en aucune façon les deux Gouvernements, et pouvant seulement être prises *ad referendum*.

Aujourd'hui je puis avoir l'honneur d'informer votre Seigneurie que le Gouverne-

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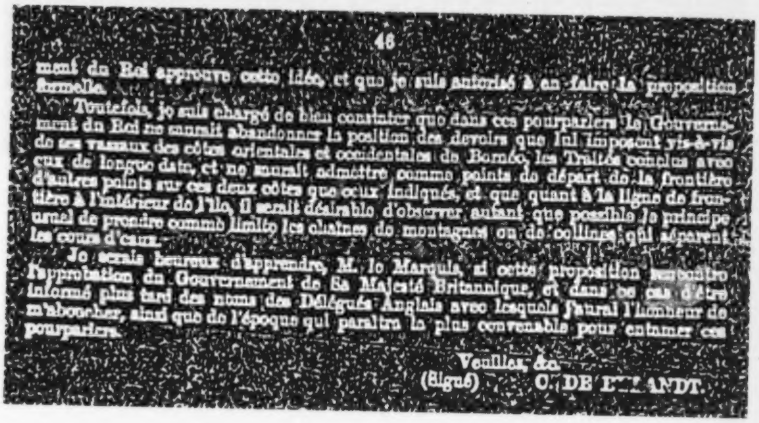

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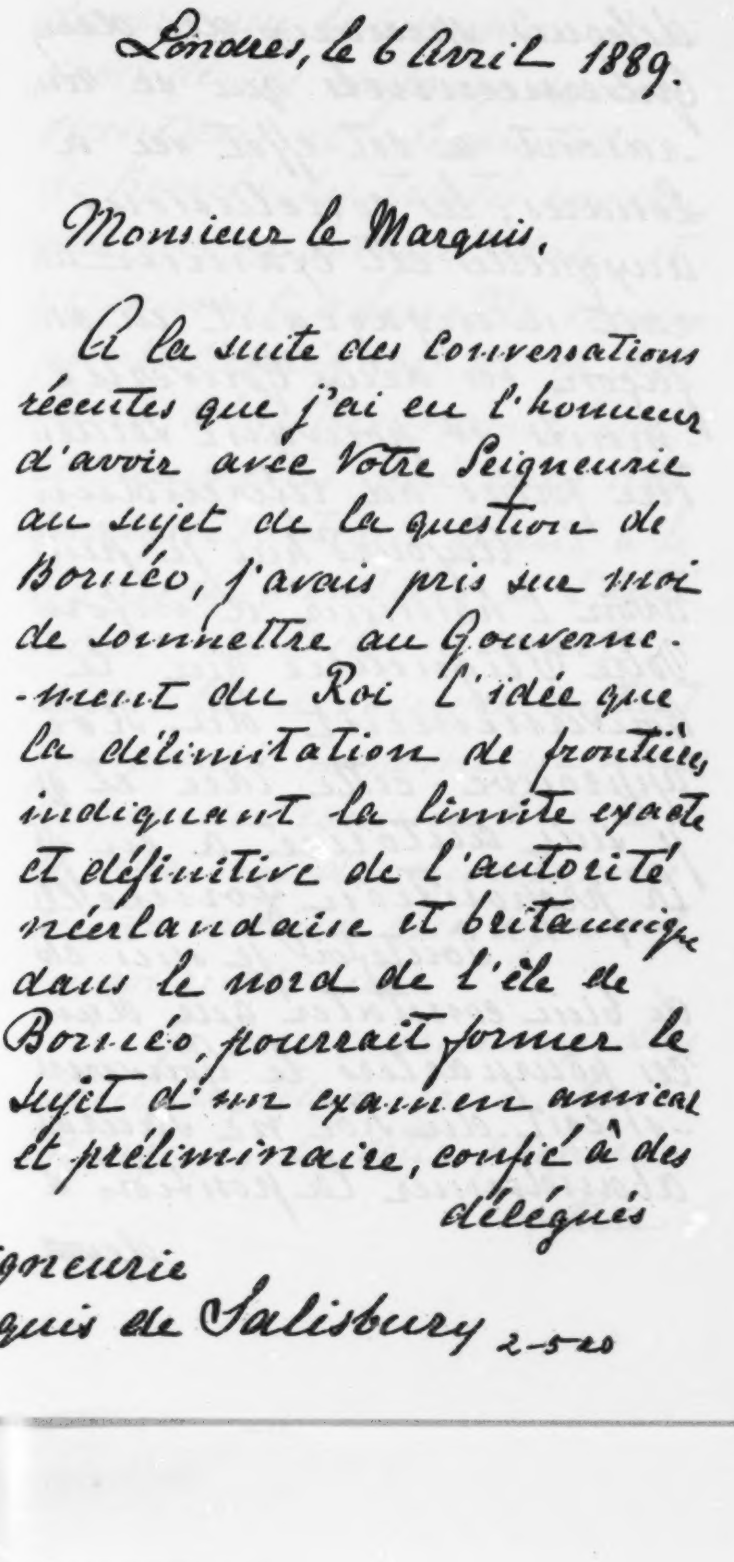
ment du Roi approuve cette idée, et que je suis autorisé à en faire la proposition formelle.

Toutefois, je suis chargé de bien constater que dans ces pourparlers le Gouvernement du Roi ne saurait abandonner la position des devoirs que lui imposent vis-à-vis de ses vassaux des côtes orientales et occidentales de Bornéo, les Traités conclus avec eux de longue date, et ne saurait admettre comme points de départ de la frontière d'autres points sur ces deux côtes que ceux indiqués, et que quant à la ligne de frontière à l'intérieur de l'île, il serait désirable d'observer autant que possible le principe usuel de prendre comme limite les chaînes de montagnes ou de collines qui séparent les cours d'eau.

Je serais heureux d'apprendre, M. le Marquis, si cette proposition rencontre l'approbation du Gouvernement de Sa Majesté Britannique, et dans ce cas d'être informé plus tard des noms des Délégués Anglais avec lesquels j'aurai l'honneur de m'aboucher, ainsi que de l'époque qui paraîtra la plus convenable pour entamer ces pourparlers.

Veuillez, &c.
(Signé) C. DE BYLANDT.



Londres, le 6 Avril 1889.

Monsieur le Marquis,

A la suite des conversations récentes que j'ai eu l'honneur d'avoir avec Votre Seigneurie au sujet de la question de Bornéo, j'avais pris sur moi de soumettre au Gouvernement du Roi l'idée que la délimitation de frontière, indiquant la limite exacte et définitive de l'autorité néerlandaise et britannique dans le nord de l'île de Bornéo, pourrait former le sujet d'un examen amical et préliminaire, confié à des

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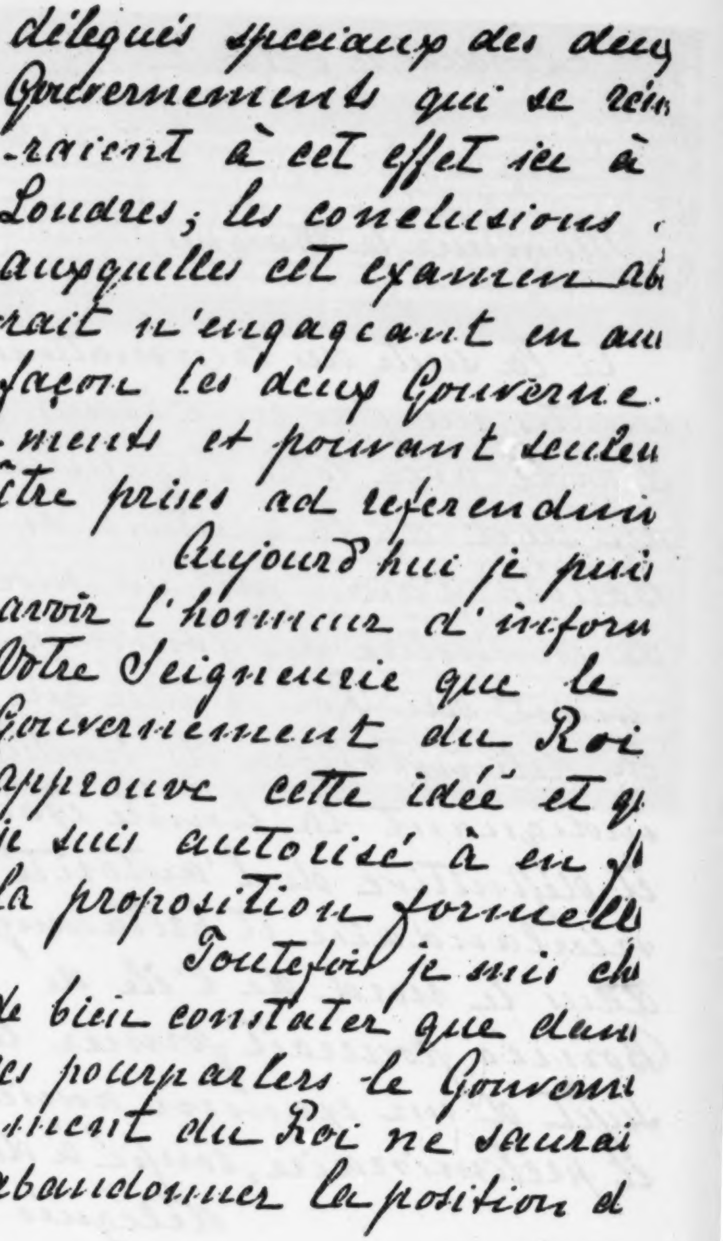

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Aujourd'hui je puis
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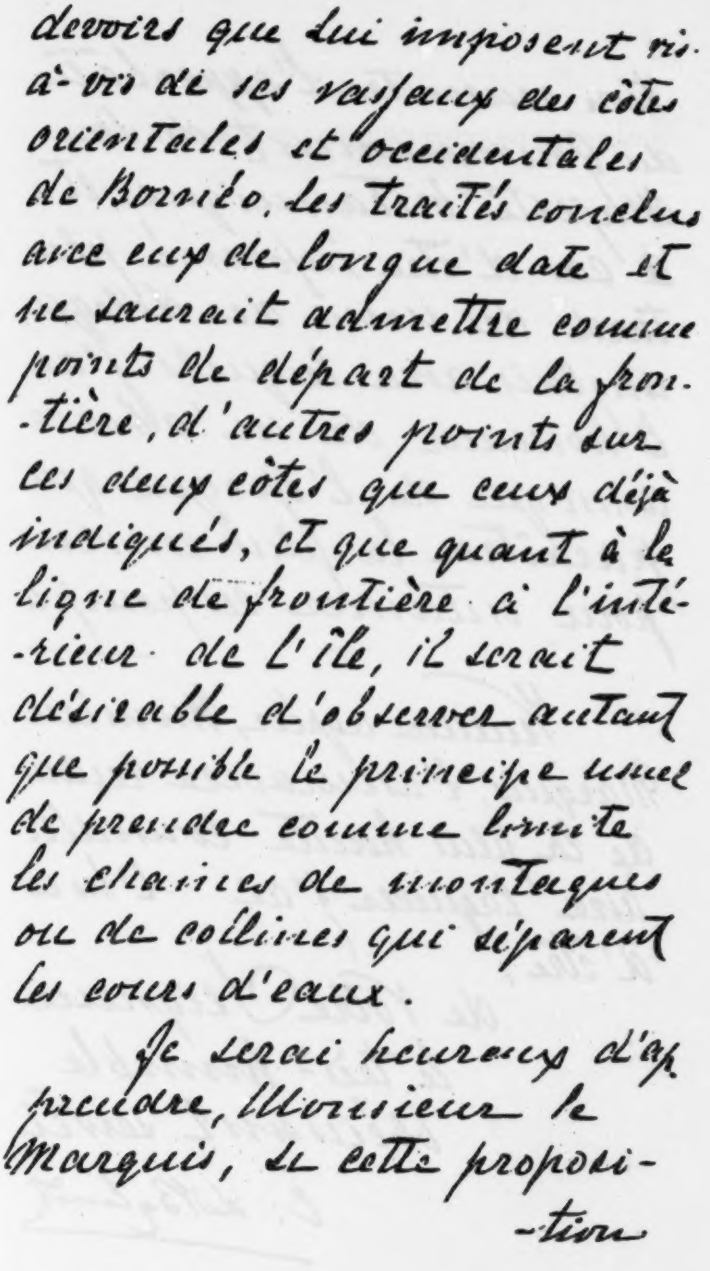
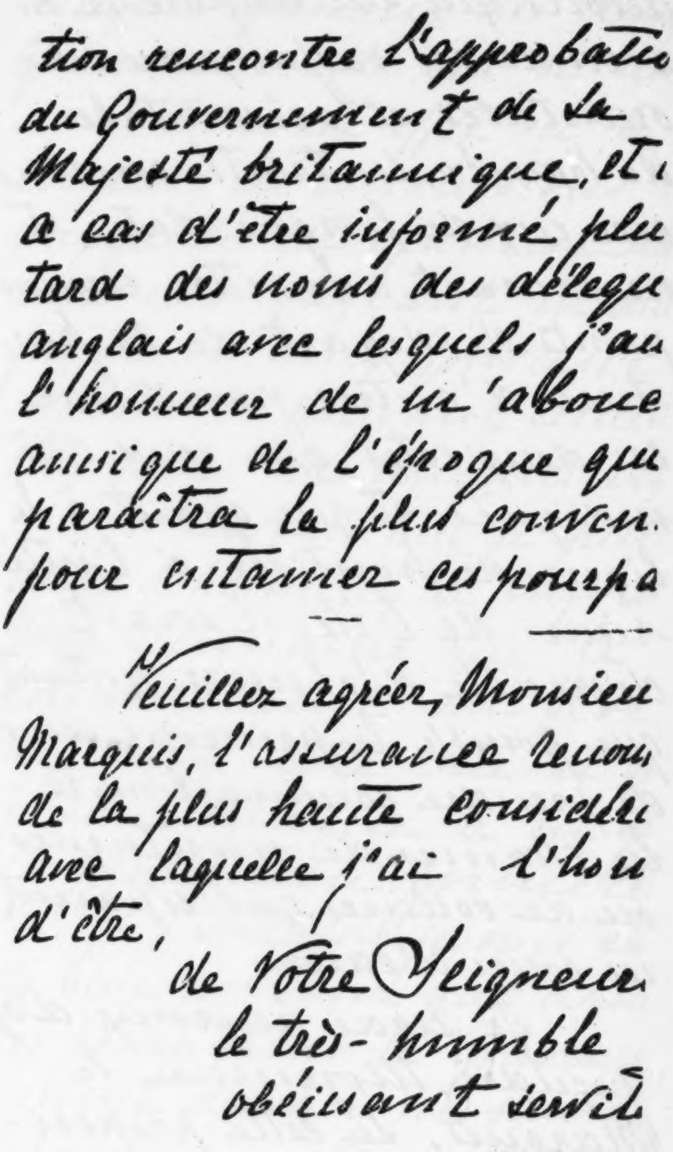


devoirs que lui imposent vis-à-vis de ses vassaux des côtes orientales et occidentales de Bornéo. les traités conclus avec eux de longue date et ne saurait admettre comme points de départ de la frontière, d'autres points sur ces deux côtes que ceux déjà indiqués, et que quant à la ligne de frontière à l'intérieur de l'île, il serait désirable d'observer autant que possible le principe usuel de prendre comme limite les chaînes de montagnes ou de collines qui séparent les cours d'eaux.

Je serai heureux d'apprendre, Monsieur le Marquis, si cette proposi-

-tion



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ainsi que de l'époque qu
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Veuillez agréer, Monsieu
Marquis, l'assurance renou
de la plus haute considéra
avec laquelle j'ai l'hon
d'être,

de Votre Seigneu
le très-humble
obéissant servit
C. de Bylandt

## Annex 52

## DESPATCH FROM LORD SALISBURY TO COUNT DE BYLANDT DATED 20 MAY 1889

## No. 66.

### *The Marquis of Salisbury to the Count de Bylandt.*

M. le Ministre, *Foreign Office, May 20, 1889.*

WITH reference to my note of the 12th ultimo, in regard to the proposed preliminary examination of the question of the boundary between the Dutch territories in Borneo and those under British protection, I observe with regret that the basis laid down in your note of the 6th ultimo states "que dans ces pourparlers le Gouvernement du Roi ne saurait abandonner la position des devoirs que lui imposent vis-à-vis de ses vassaux des côtes orientales et occidentales de Bornéo les Traités conclus avec eux de longue date, et ne saurait admettre, comme points de départ de la frontière, d'autres points sur ces deux côtes que ceux déjà indiqués," &c.

This reservation prejudges the question at issue between the two Governments; and I have the honour to state that Her Majesty's Government cannot enter into the friendly examination proposed by the Netherland Government unless it is agreed that all the points of the frontier which have been under dispute shall be open to discussion.

I have, &c.

(Signed) SALISBURY.

## Annex 53

## DESPATCH FROM COUNT DE BYLANDT TO LORD SALISBURY DATED 3 JUNE 1889

## No. 1.

*Count de Bylandt to the Marquis of Salisbury.—(Received June 3.)*

M. le Marquis,

*Londres, le* 3 *Juin*, 1889.

JE n'ai pas manqué de transmettre au Gouvernement du Roi le contenu de la note que votre Seigneurie m'a fait l'honneur de m'adresser en date du 20 Mai dernier, au sujet de la proposition d'examen de la délimitation de frontières des territoires respectifs dans l'Ile de Bornéo, et de rendre compte en même temps de la conversation subséquente que j'ai eu l'honneur d'avoir avec votre Seigneurie sur ce sujet.

Aujourd'hui je puis avoir l'honneur d'informer votre Seigneurie que je suis autorisé par mon Gouvernement à proposer la réunion à Londres d'une Commission composée d'un nombre égal de Délégués des deux Gouvernements pour examiner cette question de délimitation des droits réciproques, aussi en rapport avec ceux des Sultans indigènes, en ce qui concerne les limites de leurs territoires, et qu'aucun détail concernant un point quelconque de la frontière à établir ne pourra être exclu des délibérations de cette Commission, de sorte que les deux Gouvernements occuperont sous ce rapport une position de parfaite égalité et de parité.

Le résultat de ces délibérations ne devra avoir provisoirement aucun caractère obligatoire pour l'un ou l'autre des deux Gouvernements, et devra simplement servir de base et de point de départ pour une entente définitive, si nécessaire et si désirable, après que les points qui peuvent paraitre douteux auront été complètement élucidés.

En espérant que cette proposition, avec les explications qui l'accompagnent obtiendra l'approbation de votre Seigneurie, je saisis, &c.

(Signé) C. DE BYLANDT.

## Annex 54

## *MEMORANDUM RESPECTING PROPOSED BASES FOR A JOINT COMMISSION ON THE NORTH BORNEO BOUNDARY*

### BY SIR E. HERTSLET DATED 19 JUNE 1889

## *Memorandum respecting proposed Bases for a Joint Commission on the North Borneo Boundary.*

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THE Dutch Government have expressed a desire to have the boundaries between their own possessions in Borneo and the territories belonging to Sarawak, Brunei, and the British North Borneo Company, respectively, clearly defined.

The attention of the Commission should, however, in the first instance, be directed to the boundary claimed by the Dutch and by the British North Borneo Company, respectively, on the north-east *coast* of the island, in the neighbourhood of the Sibuco River, and an endeavour should be made to arrive at a clear understanding on that point.

The Dutch formerly claimed as their boundary the Atas River situated in north latitude 3° 20'; but they now claim it as extending as far north as Batu-Tinagat, situated in north latitude 4° 19,'* or thereabouts, in virtue of certain Agreements which they have entered into with the local Sultans.

This extension of the Dutch boundary, if admitted, would overlap a portion of the territory claimed by the British North Borneo Company, who maintain their right to territory as far south as the Sibuco River, in north latitude about 4° 10', in virtue of certain cessions made by the Sultans of Brunei and Sulu respectively.

The Commission should therefore determine the following points:—

1. Whether the Sultan of Boeloengan had a right to claim, as a dependency of his State, the State of Tidoeng, in which Batoe-Tinagat and the River Tawau are declared by the Dutch to be situated; and to place the same under Dutch protection.

2. Whether the Sultan of Sulu had a right to claim territory as far south as the Sibuco River, and to cede the same to Messrs. Dent and Over-

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* See Map.

[illegible], who handed over their Concessions to the British North Borneo Company.

3. What was the actual position of the Sibuco River, alluded to in the Dent and Overbeck Concessions.

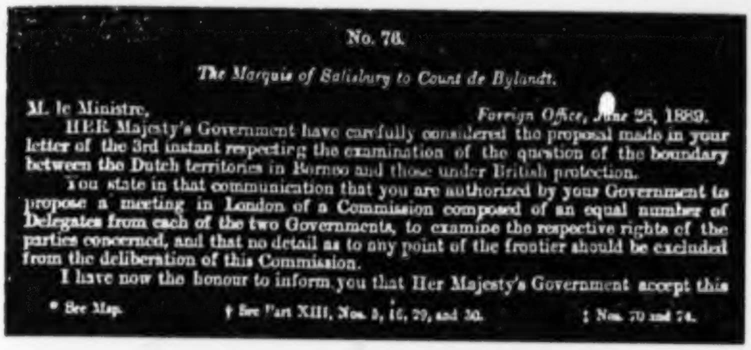
It might then be agreed that, provided a satisfactory understanding was come to on that point, the British and Dutch Governments would proceed, without delay, to define, short of making an actual survey, the inland boundary-lines which separated the Netherland possessions in Borneo from the territories belonging to the States of Sarawak, Brunei, and the British North Borneo Company.

E. HERTSLET.

*Foreign Office,*
*June* 19, 1889.

## Annex 55

# DESPATCH FROM LORD SALISBURY TO COUNT DE BYLANDT DATED 28 JUNE 1889



## No. 76.

*The Marquis of Salisbury to Count de Bylandt.*

M. le Ministre, *Foreign Office, June 28, 1889.*

HER Majesty's Government have carefully considered the proposal made in your letter of the 3rd instant respecting the examination of the question of the boundary between the Dutch territories in Borneo and those under British protection.

You state in that communication that you are authorized by your Government to propose a meeting in London of a Commission composed of an equal number of Delegates from each of the two Governments, to examine the respective rights of the parties concerned, and that no detail as to any point of the frontier should be excluded from the deliberation of this Commission.

I have now the honour to inform you that Her Majesty's Government accept this

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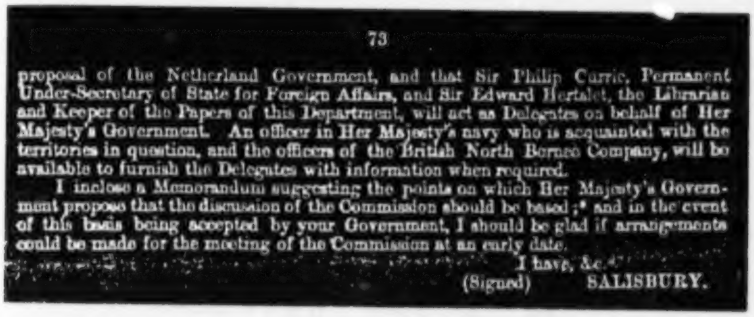
* See Map. † See Part XIII, Nos. 5, 16, 29, and 30. ‡ Nos. 70 and 74.



proposal of the Netherland Government, and that Sir Philip Currie, Permanent Under-Secretary of State for Foreign Affairs, and Sir Edward Hertslet, the Librarian and Keeper of the Papers of this Department, will act as Delegates on behalf of Her Majesty's Government. An officer in Her Majesty's navy who is acquainted with the territories in question, and the officers of the British North Borneo Company, will be available to furnish the Delegates with information when required.

I inclose a Memorandum suggesting the points on which Her Majesty's Government propose that the discussion of the Commission should be based;* and in the event of this basis being accepted by your Government, I should be glad if arrangements could be made for the meeting of the Commission at an early date.

I have, &c.
(Signed) SALISBURY.

## Annex 56

## FOREIGN OFFICE MANUSCRIPT NOTES MADE IN PREPARATION FOR ANGLO-DUTCH JOINT COMMISSION TO RESOLVE THE BOUNDARY QUESTION, UNDATED

1. It is unnecessary to discuss further the early history of the State of Boelongan.

2. It is not denied by the Dutch that a portion of Territory on the North East Coast of Borneo was ceded by the independent Sulu Sultans to the East India Company in 1763, 1764 and 1769; but it is unnecessary to pursue that point further.

3. The proof that the Sultan claimed this Territory is proved by the fact that he sold it to Mr. Dent and another.

4. Still the actual

position

position of the "Soengei Atas" was not defined nor was the northern limit of the Tidoeng District. We cannot, therefore, accept these documents as establishing any claim to the territory to the North of the Atas River.

5. The information obtained by the Company does not agree with this. The territory is believed by them to have been occupied by Sulus.

The Netherland Minister for the Colonies (Count van Goltstein) and the Minister for Foreign Affairs (M. de Rochussen) impugned the

y had seen the
f 1 November 1881

the fact in December 1881, that the territory ceded to Mr. Dent by the Sultans of Brunei and Sulu was to be governed by the Company under the Suzerainty of the Sultans, to whom an annual sum was secured. They, thereby, recognizing the rights of these Sultans to dispose of the Territory which they claimed.

6. See reply to §5.

Moreover the Sultans of Sulu and Brunei had no reason to suppose that any part of this territory was claimed by the Netherlands as they had no knowledge

whatever

whatever of the Convention of 1850.

7. Wait for Captain O. Moreau's observations.

8. Not only did the Sultan of Sulu, before the grants were made, claim the territory as belonging to him "as far South as the Sibuco River"; but the Sultan of Brunei claimed this territory also, and the British North Borneo Company now pay annually 5000$ to the former Sultan, and 2000$ to the latter for the territory then ceded, and the Company can accept no other Boundary.

River Boundaries are alluded to in the Netherland

Con-entions with local chiefs, see notably the Convention of 12th November 1850.

Native rulers really know nothing of Boundary Lines.

This observation with regard to the Sibuco would apply with equal force to the remark made by the Netherland Delegates in §3 with regard to the reason why. the Netherland Government did not adhere to the Boundary of the River Atas, as originally fixed by the Decree of 28th February 1846

It is true that the existence of the Contract with Boelongan of 1850

was

was not known at the time of the issue of the Dent and Overbeck concessions.

9. When the Spanish Govt laid claim to territory on the North East Coast of Borneo in 1880, it was informed that, if ny Power had a claim to that Territory, it was Great Britain, by virtue of rights conceded to the East India Company between 1763 and 1769.

10. See reply to § 13.

1. The Treaty of 2nd June 1878 was not signed until four years after the Sultan of Boelongan had been appointed, and not until some [illegible] after the signature of the Dent and

Overbeck

Overbeck Concessions of 29th December 1877 and 22nd January 1878.

The territory of Boelongan was thus described in the Convention of 12 november 1850:-

"Towards the Sulu Possessions, on the Sea shore the Cape called Batoe Tinagat, and beyond, the River Tawao".

Certain Islands were also named, but no reference was made to any District inland as being included in that definition, or to any watershed in this direction

12. In unofficial maps the Sesajab District is separated from the River

Sibuco

Sibuco by two smaller Districts formed by the Rivers Ledon and Sambakong.

13. Not only did the Sultans of Sulu and Brunei claim territory as far South as the Sibuco River; but the Spanish ministerial Journal the "Diario Espagnol" asserted in January 1876, before the Cessions in question were granted, that the Sultan of Sulu was Lord of all the part of Borneo between Kimanis Point on the West and the Bay of Santa Lucia on the East, which would include the Sibuco River.

Captain Johnson R. N. has stated to the Joint Commission that this

[illegible]

chart is so incorrect that no reliance can be placed upon it with regard to the position of the Sibuco River

14. But the Dutch Flag had been hoisted for many years on the South Bank of the Boelongan River which is South of the Atas River, and, in the absence of any official maps on the Subject, or the publication of the Convention of 1850, recently produced, or of any overt act on the part of the Dutch such as the hoisting of their flag on the extreme point claimed by them, how could it be known to what extent of Territory the Netherland Government could claim?

15. – In this note, it was stated

that

that the exact position of the Bilnco River and Batoe Tinagat were uncertain and attention was drawn to unofficial maps. — — 16, 17, & 18. But the British North Borneo Company had protested (3 years previously that is to say on the 4th. July 1880) against the action of the Dutch in hoisting their Flag at Batu Tinagat.

19.

20. "Algemeene Kaart van Nederlandsch Oostindie met h. oogstdeszelfs bestemming opgedragen

opgedragen aan zijne Majesteit
den Koning der Nede.landen,
Volgens echte bescheiden,
grootendeels in handschrift
berustende by de Archieven
van het Koloniaal Bestuur
te 's Gravenhage en te Batavia
mitsgaders uit medeliulingen
van geleerden, Beambten,
Zee-en Land Officieren in
Nederlandsch Indie, te
Zamengesteld door G.F.
Baron von Deerfelden van
Huiterstein, Kamerheer van
Z.M. etc. etc, etc; uitgegeven
op last des Konings, onder
het bestuur van zijne Exc$^{tie}$
den H$^{re}$ J.C. Baud, minister.
van Kolonien, etc, etc, en het
opzigt van den Lieutenant
ter Zee 1$^{e}$ Klasse Jhr. G.A.
Tindal, lid der Commissie
tot het vinden der lengte
op Zee etc, etc. 1842.

It was dedicated to

the

the King.

21. 22. 23. 24 & 25. But see Ct. Bylandt's Communication of the 6th September 1878, in which these so called unofficial maps are referred to as authorities.

26. See reply to § 13.

But they were founded upon the best information that Dutch and other Geographers possessed, and the official maps issued by the Dutch Govt in 1885 must be equally untrustworthy, since the territory inland has never been explored or surveyed, and the watersheds laid down therein must be purely ideal.

But is it not admitted that the Dutch Flag has

never

never been hoisted there, or any outward sign made of the Dutch possessing any such authority.

No Boundary Agreement has ever been entered into between the Sultans of Sulu, Brunei, or Boelongan and Sir J. Brooke pointed out on the 3rd October 1849 that the Sovereignty of Borneo was imperfect, the Boundary lines of petty states irregular and vague and of little consequence to the native Rulers.

It is not pretended that their territories were held by the Sultans either of Sulu or Boelongan otherwise than by the right of the Strongest, and the admission that the Sultan of Sulu repeatedly

repeatedly conquered the territory is a confirmation of his claim of Sovereignty over it.

The Sultan himself defined his territory as extending to the River Sibuco, and this seems to establish his claim, at least as clearly as any similar statement that may have been made by the Boelongan Sultan.

Declarations of Chiefs a d populations have been made on the other side, and ex parte statements made under pressure to interested persons, as proof, cannot be accepted.

In August 1880 the Netherland minister for Foreign Affairs (Baron de Leyden) admitted fully that

that the Sultans of Sulu and Brunei were independent and that the Netherlands had no claim to sovereignty over that part of the Island.

Northern limit of the Tidong District. We cannot, therefore, accept these documents as establishing any claim to the territory north of the Atas River.

5. The information obtained by the Company does not agree with this. The territory is believed by them to have been occupied by Sulus.

The Netherland Minister for the Colonies (Count van Goltstein) and the Minister for Foreign Affairs (M. de Rochussen) recognized the fact in December 1881, after they had seen the Charter of 1 November 1881, that the territory ceded to Mr Dent by the Sultan.....

of—

of Brunei and Sulu was to be governed by the Company under the Suzerainty of the Sultans, to whom an annual sum was secured. They thereby, recognizing the rights of those Sultans to dispose of the Territory which they claimed.

6 See reply to §5.

Moreover the Sultans of Sulu and Brunei had no reason to suppose that any part of this territory was claimed by the Netherlands, as they had no knowledge whatever of the Convention of 1850.

7 Wait for Captain O. Moreau's Observations.

8 Not only did the Sultan of Sulu before the grants

[illegible]

were made; claim the
territory as belonging to him
"as far South as the Sibuco
River"; but the Sultan of
Brunei claimed this territory
also, and the British North
Borneo Company now pay
annually $5000 to the
former Sultan, and $2000
to the latter for the territory
then ceded, and the Company
can accept no other Boundary.

River Boundaries are
alluded to in the Netherland
Conventions with local Chiefs,
see notably the Convention
of 12th November 1850.

Native rulers really
know nothing of Boundary
lines.

This observation with
regard

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It is true that the existence of the Contract with Boelongan of 1850 was not known at the time of the issue of the Dent and Overbeck concessions.

9. When the Spanish Govt laid claim to territory on the North East Coast of Borneo in 1880, it was

in former.

informed that, if any Power had a claim to that Territory, it was Great Britain, by virtue of rights conceded to the East India Company between 1763 and 1769.

10 See ref. 7 to §13.

11. The Treaty of 2nd June 1878 was not signed until four years after the new Sultan of Boolongan had been appointed, and not until some time after the signature of the Dent and Overbeck Concessions of 29 December 1877 and 22nd January 1878.

The territory of Boelongan was thus described in the Convention of 12 November 1850: "Towards the Sulu

possessions

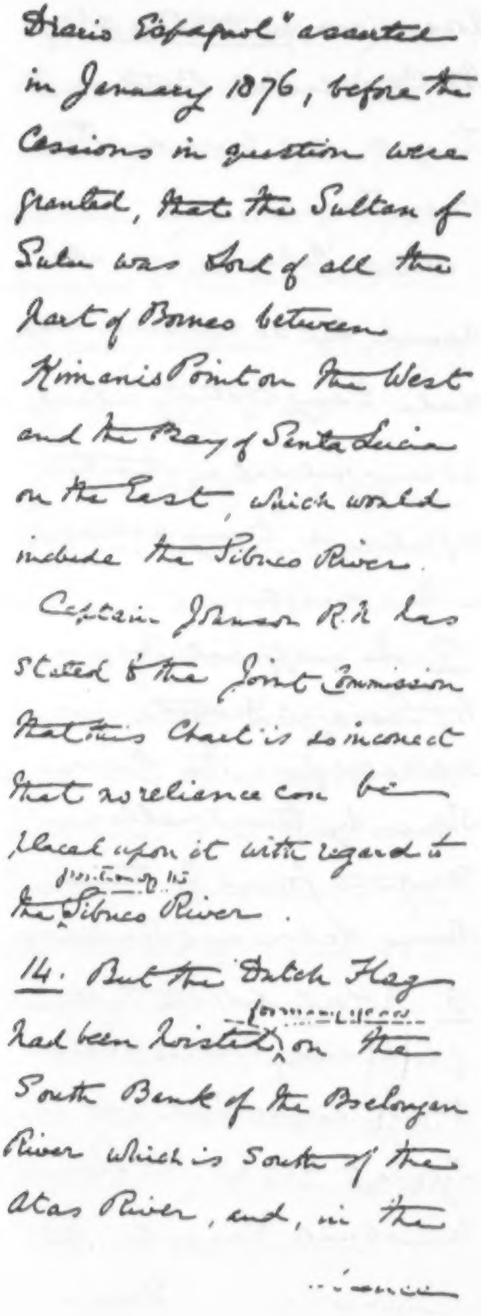
possessions, on the Sea shore the Cape called Batu-Tinagat, and beyond, the River Tawao".

Certain Islands were also named, but no reference was made to any District inland as being included in that definition, or to any watershed in this direction.

12 In unofficial maps the Sesajab District is separated from the River Sibuco by two smaller Districts formed by the Rivers Ledon and Sambabong.

13. Not only did the Sultans of Sulu and Brunei claim territory as far South as the Sibuco River, but the Spanish Ministerial Journal the:

"Diario



Diario Español" asserted in January 1876, before the Cessions in question were granted, that the Sultan of Sulu was Lord of all the Part of Borneo between Kimanis Point on the West and the Bay of Santa Lucia on the East, which would include the Sibuco River.

Captain Johnson R.N. has stated to the Joint Commission that this Chart is so incorrect that no reliance can be placed upon it with regard to the position of the Sibuco River.

14. But the Dutch Flag had been hoisted [illegible] on the South Bank of the Bulongan River which is South of the Atas River, and, in the

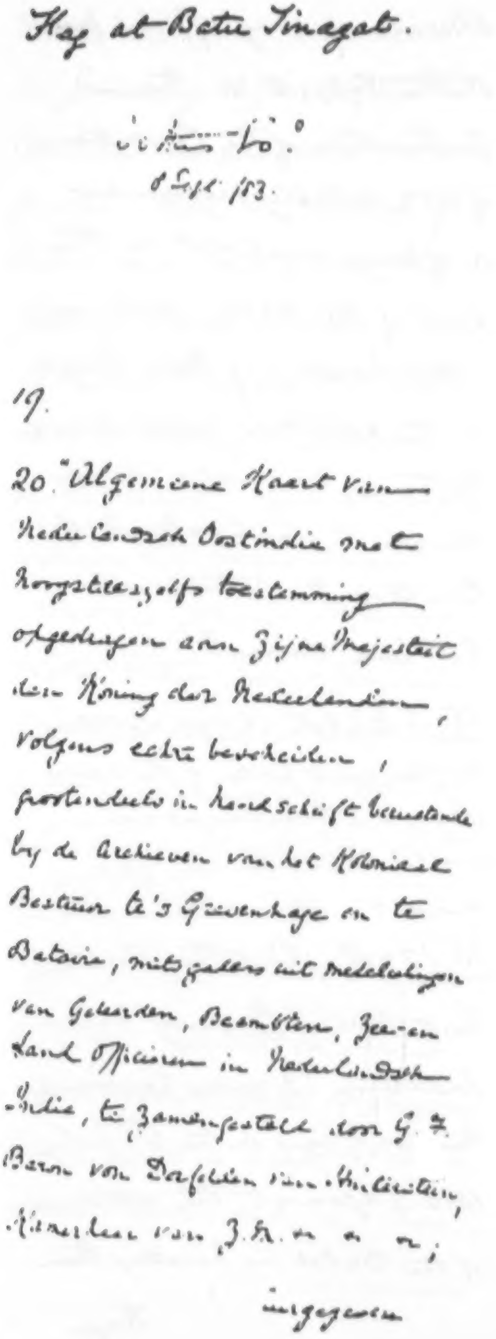
[illegible]

absence of any official Maps on the Subject, or the publication of the Convention of 1850, recently produced or of any overt act on the part of the Dutch such as the hoisting of their flag on the extreme point claimed by them, how could it be known to what extent of territory the Netherland Govt. laid claim?

15 In this Note, it was stated that the exact position of the Sibuco River and Batu Tinagat were uncertain and allusion in non-descript unofficial maps.

16, 17 + 18. But the British North Borneo Company had protested (3 years previously, that is to say on the 4th July 1880) against the action of the Dutch in hoisting their

Flag



Hay at Batu Tinagat.

[illegible]
8 Sept. /83.

19.

20. "Algemeene Kaart van Nederlandsch Oostindie met Hoogstdeszelfs toestemming opgedragen aan Zijne Majesteit den Koning der Nederlanden, volgens echte bescheiden, grootendeels in handschrift berustende bij de Archieven van het Koloniaal Bestuur te 's Gravenhage en te Batavia, mitsgaders uit mededeelingen van Geleerden, Beambten, Zee- en Land Officieren in Nederlandsch-Indie, te Zamengesteld door G. F. Baron von Derfelden van Hinderstein, [illegible] van J. H. [illegible];

ingegeven

Uitgegeven op last des Konings onder het bestuur van Zijne Exc$^{tie}$, den H$^{r}$ J.C. Baud, Minister van Kolonien, en &. en het opzigt van den Luit$^{t}$ ter Zee 1$^{e}$ Klasse Jh$^{r}$ G.A. Tindal, lid der Commissie tot het vinden der lengte op Zee en en 1842.

It was dedicated to the King.

21, 22, 23, 24 and 25. But see C$^{t}$ Bylandts Communication of the 6$^{th}$ September 1878, in which these so called unofficial Maps are referred to as authorities.

26. See Reply to § 13.

But they were founded upon the best information that Dutch and other Geographers possessed, and the official Map issued by the Dutch, in 1885 [illegible] since the territory inland

has

has never been explored or surveyed and the watersheds laid down therein must be purely ideal.

But is it not admitted that the Dutch Flag has never been hoisted there, or any outward sign made of the Dutch possessing any such authority.

No Boundary Agreement has ever been entered into between the Sultans of Sulu, Brunei, or Boelongan, and Sir J. Brooke pointed out on the 3rd October 1849 that the Sovereignty of Borneo was imperfect, the Boundary lines of petty States irregular and vague, and of little consequence to the Native Rulers.

It is not pretended that their territories were held by

one

the Sultans either of Sulu or Boelongan otherwise than by the right of the strongest, and the admission that the Sultan of Sulu repeatedly conquered the territory is a confirmation of his claim of sovereignty over it

The Sultan himself defined his territory as extending to the River Sibuco, and this seems to establish his claim, at least as clearly as any similar statement that may have been made by the Boelongan Sultan.

Declarations of Chiefs and populations have been made on the other side, and *ex parte* statements made under pressure to interested persons cannot be accepted as proof.

on

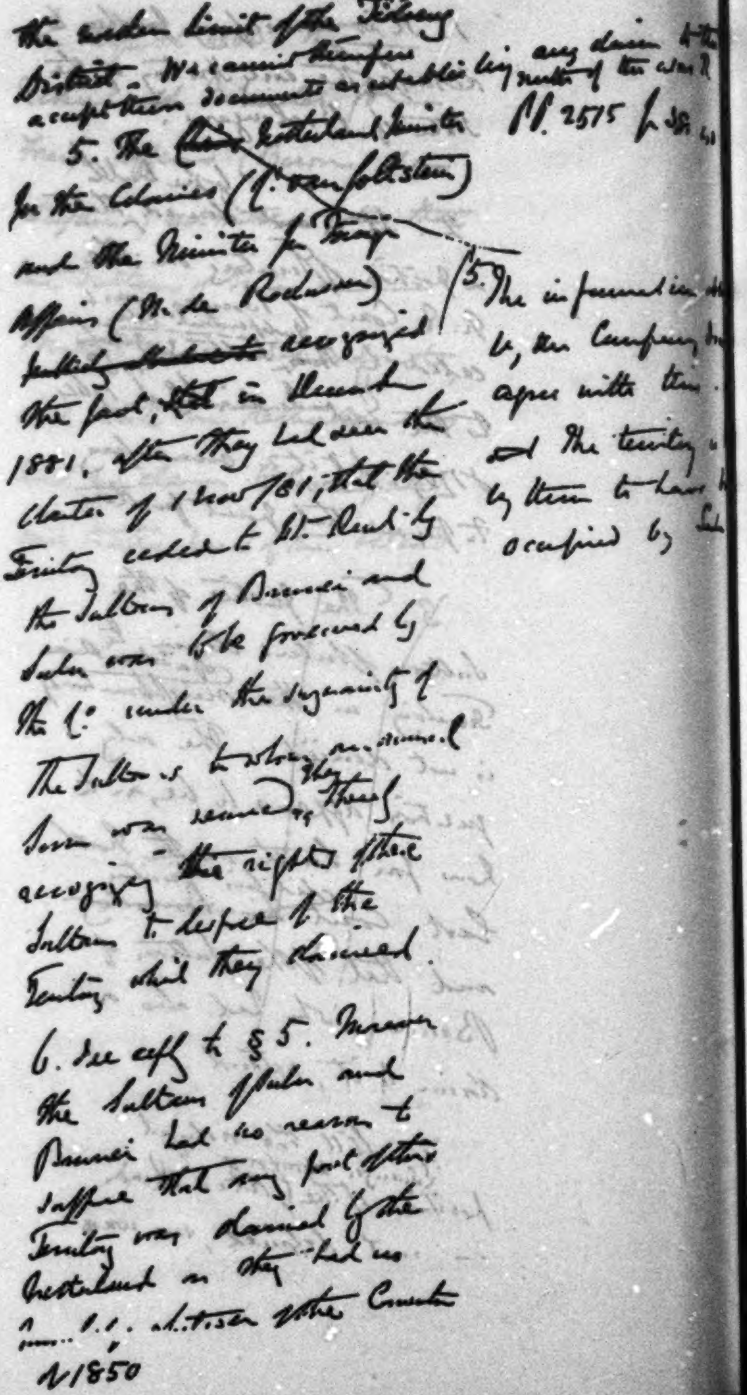
In August 1880 the Netherland Minister for Foreign Affairs (Baron de Seyden) admitted fully that the Sultans of Sulu and Brunei were independent, and that the Netherlands had no claim to Sovereignty over that part of the Island.

1. It is unnecessary further to discuss further the early History of the State of Boeloengan.

2. It is not denied by the Dutch that a portion of territory on the N. E. Coast of Borneo was ceded by the ~~Sultans~~ [illegible] Sooloo in 1763 to the East India C° in 1764 & 1769: but it is unnecessary to pursue that point further.

3. The justice of the Sultan of Bulungan's claim to the [illegible] in the neighbouring territory is not denied. The only question appears to be as to how far south on the North East Coast ~~[illegible]~~ that territory extends and that of the Sultan of Berau, who had also a claim to it, extend.

Still the actual position of the [illegible] [illegible] Atas Road is not defined, and [illegible]



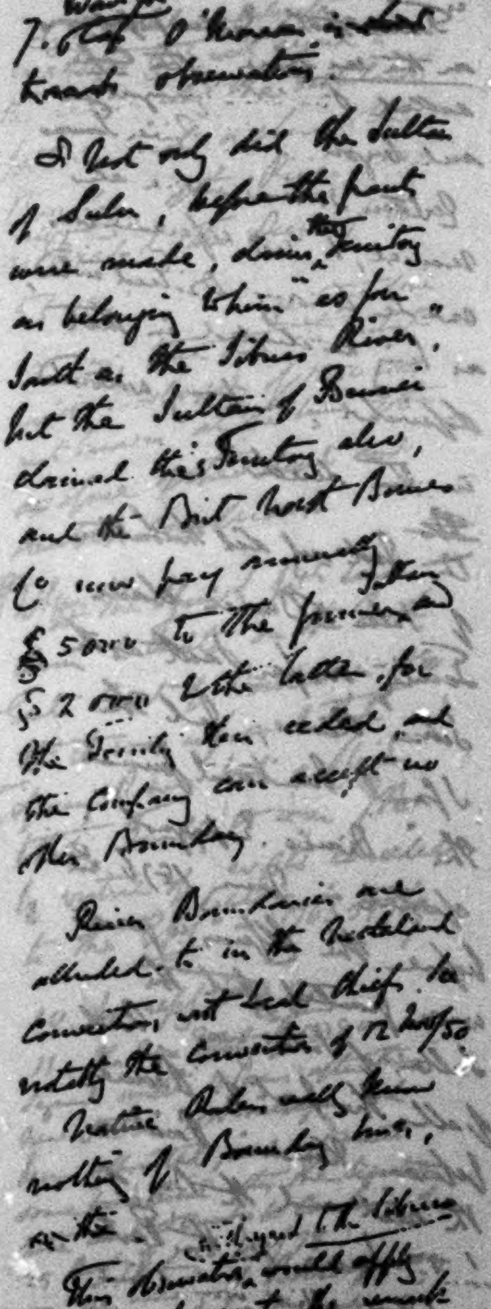
the western limit of the Tidung District. We cannot therefore accept these documents as establishing any claim to the north of the war R

M. 2575 f. 38

5. The ~~Chief~~ Netherland Minister for the Colonies (M. van Goltstein) and the Minister for Foreign Affairs (M. de Rochussen) ~~[illegible]~~ recognized the fact, that in December 1881, after they had seen the charter of 1 Nov/81, that the Territory ceded to Mr Dent by the Sultans of Brunei and Sulu was to be governed by the Co under the sovereignty of The Sultans to whom the [illegible] was reserved as they recognized ~~the~~ the rights of these Sultans in respect of the Territory which they claimed.

5. The information ob
by the Company
agree with this.
and the territory
by them to have
occupied by Sul

6. See reply to § 5. Moreover the Sultans of Sulu and Brunei had no reason to suppose that any part of their Territory was claimed by the Netherlands as they had no [illegible] 1.1. [illegible] of the Convention of 1850



7. Capt [illegible] O'[illegible] [illegible] Knocks observations. 11

8. Not only did the Sultan of Sulu, before the grants were made, claim the territory as belonging to him as far South as the Sibuco River, but the Sultan of Brunei claimed this territory also, and the Brit North Borneo Co now pay annually to the former Sultan $5000 and to the latter $2000 for the territory then ceded, and the Company can accept no other boundary. 13

River boundaries are alluded to in the Netherland Conventions with local chiefs, notably the Convention of 12 Nov/50.

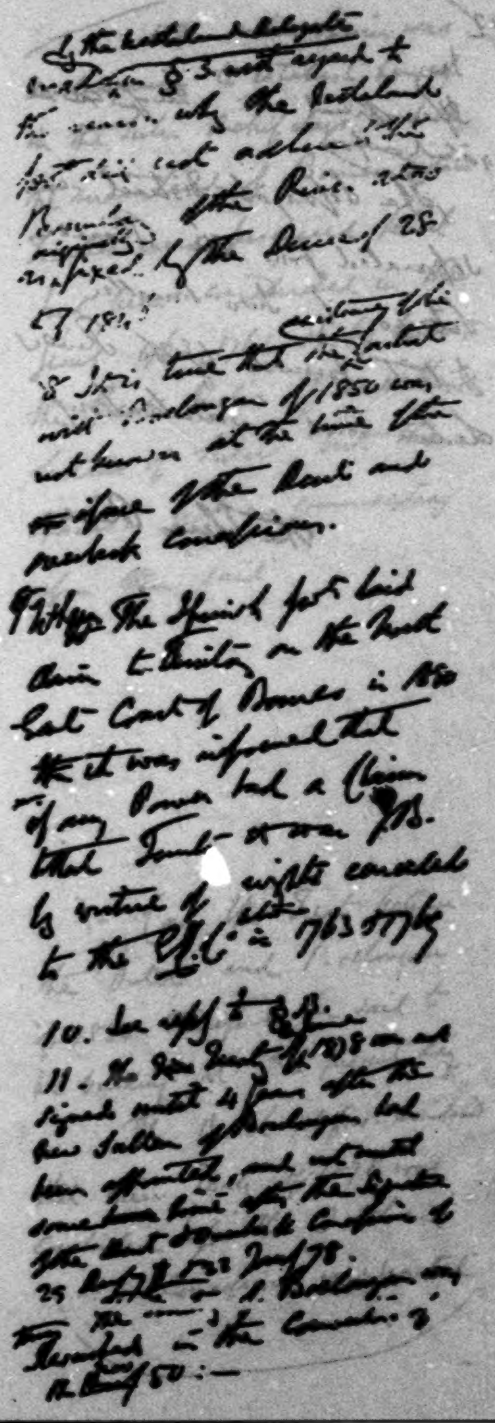
Native Rulers usually know nothing of boundary lines, as the [illegible] alleged to the Sibuco

This observation would apply [illegible] & the remark with equal force [illegible]

1) "Formerly the Sulu possessions
on the sea shore, the Cape
called [illegible] [illegible]
[illegible] River [illegible]
and beyond.
Certain Islands were also
named, but no reference was
made to any District which,
as being included in that
definition, or being extended
in this direction.

B. ~~The~~ The last [illegible] that the Sultan
of Sulu & Borneo claim
territory as far South as the
[illegible] River; but the
Spanish ministerial journal
the "Diario Español"
appeared in January 1876 [illegible]
before the officers in [illegible]
were granted ~~that the~~
~~were~~ that the
Sultan of Sulu was Lord
of all the part of Borneo
between Kimanis Point on
the West and the Bay of
St. Lucia on the East
[illegible] which was [illegible]

N.1850



by the Netherlands Delegate
on 2 June § 3 with regard to
the reasons why the Netherlands
[illegible] did not adhere in [illegible]
[illegible] of the River [illegible]
Boundary [illegible] by the Decree of 28
annexed
[illegible] 18[illegible]

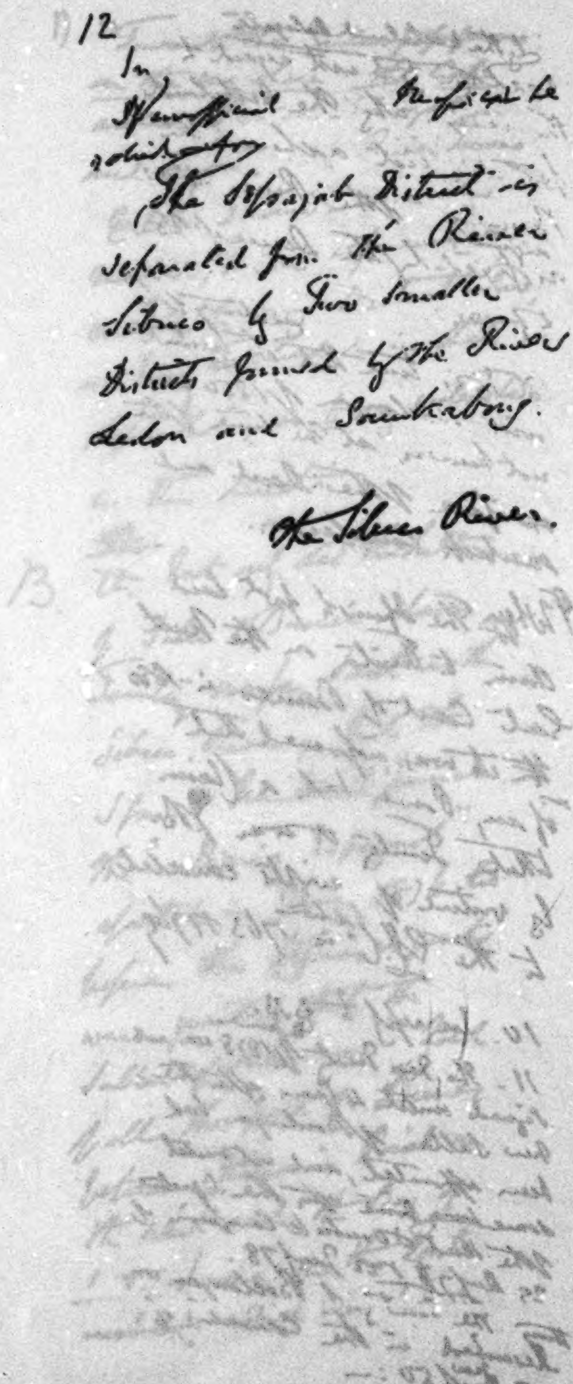
8 It is true that the ~~existing the~~ contract
with Bulungan of 1850 was
not known at the time of the
[illegible] of the Decree and
[illegible] concessions.

9 Whereas the Spanish first laid
claim to territory on the North
East Coast of Borneo in 1880
it was informed that
if any Power had a claim
to that territory it was G.B.
by virtue of rights ceded
to the E.I.C. in 1763 & 1764

10. See [illegible]

11. The [illegible] of 1878 was not
signed until 4 years after the
new Sultan of Bulungan had
been appointed, and not until
some time after the [illegible]
[illegible] to [illegible]
of the [illegible] [illegible] June 1878.

25 [illegible] 1. Bulungan was
[illegible] in the Convention of
[illegible] 1850:—



12

In

Insufficient [illegible] be

administration

The Sesajab District is separated from the River Sebuco by two smaller Districts formed by the Rivers Sedon and Sembakong.

The Sibuco River.

188 when Spain was endeavouring to establish herself in the Sulu Archipelago and on the mainland of Borneo certain Treaties were produced which had been concluded in the years 1763, 1764, 1769 between the East India Co and the Sultans of Sulu, but the Spanish govt in commenting upon them said

Can the Treaty between the Dutch and Bulongan of 1850 therefore be said to be binding at the present day.

The Dutch at first maintained that their Treaty of 1878 was concluded before the British and N.B.C. Concessions were granted.

I am afraid the case of the British North Borneo Co is not a very strong one, if Treaties and Netherland Decrees alone are to decide the question.

But the Treaty with Boelongan of 1850 upon which they lay great stress was kept secret for 38 years; and it is a remarkable fact (to say the least of it) that it should never have been referred to by the Dutch Govt in the Boundary Correspondence which has taken place, and that they (until the) should have based their claim on the a later Treaty signed on the 2nd June 1878, as giving them a right to Batu-Tinagat and the Tawao River. Sir but without being shewn that they were in error in this respect they produced an early Treaty which was signed in 1850; and what is very remarkable is the fact that it is believed that this is the only Treaty out of the numerous Treaties which the Dutch have concluded with the Native Chiefs of Borneo since 1824 of which a copy has not been communicated to H.M.'s Govt about the time of its conclusion.

With regard to the Dutch Decrees, ~~they~~ Dutch would appear to claim a right to extend their Boundary to the North-East of the Island just as they might think proper. But the Decree upon which H.M. Govt have already relied as defining the Dutch Boundary was that of the 28 Feb 1846, since it actually defined it as extending to the Atas River in lat 3° 20

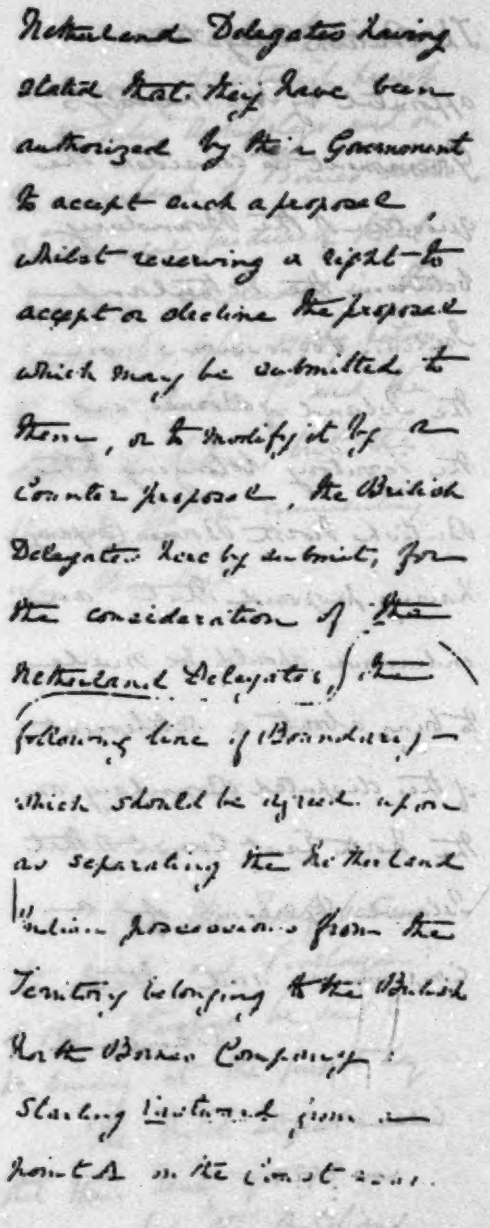
188 when Spain was endeavouring to establish herself in the Sulu Archipelago and on the mainland of Borneo certain Treaties were produced which had been concluded in the years 1763, 1764, 1769 between the East India Co and the Sultans of Sulu, but the Spanish part in commenting upon them said

Can the Treaty between the Dutch and Bulongan of 1850 therefore be said to be binding at the present day.

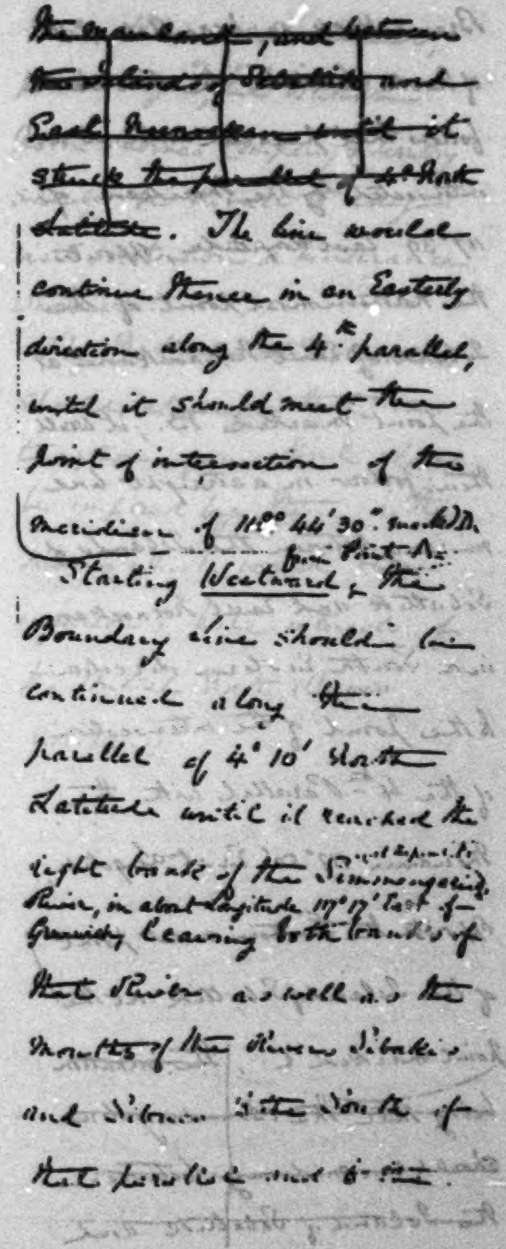
The Dutch at first maintained that their Treaty of 1878 was concluded before the Dutch and Overbeck Concessions were granted

The British Delegates
appointed by Her Majesty's
Government to consider the
question of the Boundary
between the Netherland
Indian Possessions on
the Island of Borneo, and
the Territory belonging to the
British North Borneo Company,
having proposed that an
endeavour should be made
to bring about a settlement
of the disputed Boundary on
the North East Coast of that
Island by means of a
compromise, and the

R. Kirkland

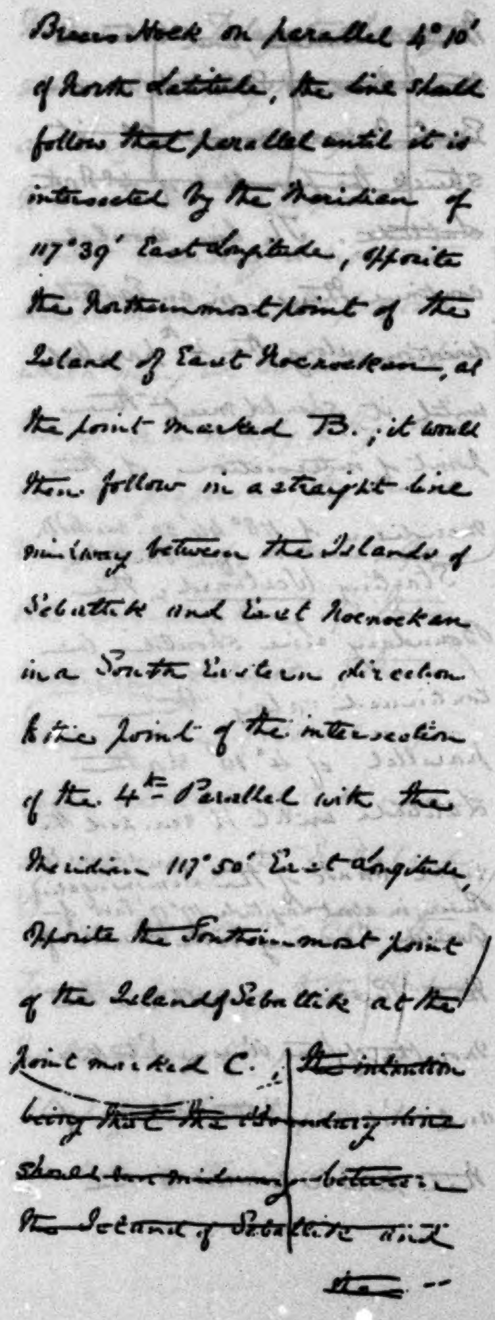


Netherland Delegates having
stated that they have been
authorized by their Government
to accept such a proposal,
whilst reserving a right to
accept or decline the proposal
which may be submitted to
them, or to modify it by a
counter proposal, the British
Delegates hereby submit, for
the consideration of the
Netherland Delegates, the
following line of Boundary—
which should be agreed upon
as separating the Netherland
Indian possessions from the
Territory belonging to the British
North Borneo Company:
Starting instead from a
point A on the coast ....



~~the mainland, and between the islands of Sebittik and East Nunukan until it struck the parallel of 4° North Latitude~~. The line would continue thence in an Easterly direction along the 4th parallel, until it should meet the point of intersection of the meridian of 117° 44' 30" marked D. from Point A.

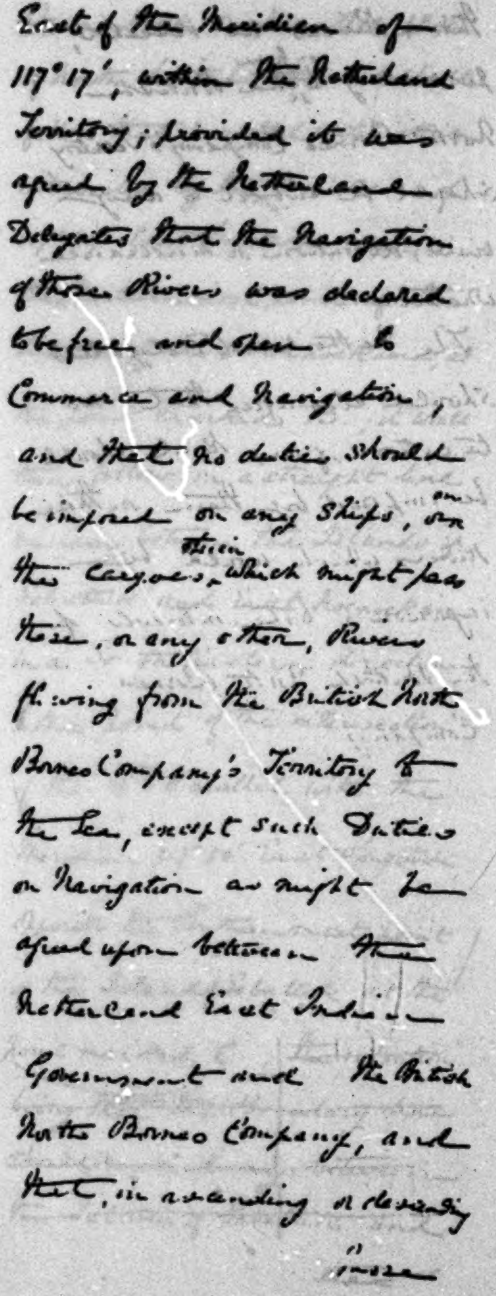
Starting Westward, the Boundary line should be continued along the parallel of 4° 10' North Latitude until it reached the right bank of the Simengaris at a point River, in about Longitude 117° 17' East of Greenwich leaving both banks of that River as well as the mouths of the Rivers Sibuku and Sibawan to the South of that parallel and to [illegible].



Broers Hoek on parallel 4° 10' of North Latitude, the line shall follow that parallel until it is intersected by the Meridian of 117° 39' East Longitude, opposite the Northernmost point of the Island of East Noenoekan, at the point marked B.; it would then follow in a straight line midway between the Islands of Sebattik and East Noenoekan in a South Eastern direction to the point of the intersection of the 4th Parallel with the Meridian 117° 50' East Longitude, opposite the Southernmost point of the Island of Sebattik at the point marked C. ~~the intention being that the Boundary line should be midway between the Island of Sebattik and the~~ --

those Rivers no vessels, proceeding to or from the British North Borneo Company's Territory, should be subject to any visit, detention or hindrance whatever.

The Netherland Delegates should also agree that no detention of any kind should be imposed by them on those Rivers which would be injurious, to the interests of the British North Borneo Company.



East of the Meridian of
117° 17', within the Netherland
Territory; provided it was
agreed by the Netherland
Delegates that the Navigation
of those Rivers was declared
to be free and open to
Commerce and Navigation,
and that no duties should
be imposed on any Ships, or on
their cargoes, which might pass
those, or any other, Rivers
flowing from the British North
Borneo Company's Territory to
the Sea, except such Duties
on Navigation as might be
agreed upon between the
Netherland East Indian
Government and the British
North Borneo Company, and
that, in ascending or descending

those

It is further agreed that Batoe Tinagat and Tawao, the former situated in about 4° 14' North Latitude and 117° 58' East Longitude, and the latter in about 4° 15' North Latitude and 117° 54' East Longitude, with a rayon of three miles around the former and of the same distance round the latter point, should be included within Netherland Territory, on the understanding that no fortifications shall at any time be erected within those zones.

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